

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
PRESCRIPTION OPIATE)
5 LITIGATION) Case No.
6) 1:17-MD-2804
THIS DOCUMENT RELATES TO) Hon. Dan A. Polster
ALL CASES)
)

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9
10 Friday, December 14, 2018
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12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW
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16 Videotaped Deposition of PATSY LITTLE,
held at Stone Pigman Walther Wittmann LLC,
17 909 Poydras, Suite 3150, New Orleans,
Louisiana, commencing at 8:06 a.m., on the
18 above date, before Michael E. Miller, Fellow
of the Academy of Professional Reporters,
19 Registered Diplomat Reporter, Certified
Realtime Reporter and Notary Public.
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Golkow Litigation Services

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1 PROCEEDINGS

2 (December 14, 2018 at 8:06 a.m.)

3 THE VIDEOGRAPHER: We're now on
4 the record. My name is David Lane,
5 videographer for Golkow Litigation
6 Services. Today's date is
7 December 14th, 2018. Our time is
8 8:05 a.m.

9 This deposition is taking place
10 in New Orleans, Louisiana in the
11 matter of National Prescription Opiate
12 Litigation. Our deponent today is
13 Patsy Little.

14 Counsel, please introduce
15 yourselves and state whom you
16 represent.

17 MS. FUMERTON: Tara Fumerton on
18 behalf of Walmart and the witness, and
19 with me today is Scott Elmer and
20 Jennifer Bechet.

21 MR. CIULLO: Zachary Cuillo
22 from Kirkland & Ellis on behalf of
23 Allergan Finance LLC.

24 MR. BOWER: Zach Bower on
25 behalf of plaintiffs in the MDL.

1 MS. BARTLETT: Caroline
2 Bartlett on behalf of plaintiffs in
3 the MDL.

4 THE VIDEOGRAPHER: Will counsel
5 on the phone please introduce
6 themselves.

7 MR. HAWKINS: This is Will
8 Hawkins from Williams & Connolly on
9 behalf of Cardinal Health.

10 MR. LADD: This is Matthew Ladd
11 of Morgan Lewis & Bockius on behalf of
12 Rite Aid.

13 MS. SUNDERLAND: This is Sara
14 Sunderland with Covington & Burling on
15 behalf of McKesson.

16 MR. FAUVRE: David Fauvre from
17 Arnold & Porter on behalf of the Endo
18 and Par defendants.

19 MS. NOWAK: Darlene Nowak,
20 Marcus & Shapira, on behalf of HBC
21 Services.

22 MR. INNES: Michael Innes on
23 behalf of plaintiffs in the MDL.

24 THE VIDEOGRAPHER: The court
25 reporter today is Mike Miller, and he

1 will now swear in the witness.

2 PATSY LITTLE,

3 having been duly sworn,

4 testified as follows:

5 EXAMINATION

6 BY MR. BOWER:

7 Q. Good morning, Ms. Little. How
8 are you today?

9 A. Good morning. Great.

10 Q. Thank you for being here. We
11 appreciate it.

12 Have you ever been deposed
13 before?

14 A. I have not.

15 Q. You have not, okay. So I'm
16 sure your counsel went over a few ground
17 rules for you, but just so we're all on the
18 same page, let's talk about that for a
19 minute.

20 I need you to answer if it's a
21 yes-or-no question verbally, so in other
22 words, don't nod your head, so the court
23 reporter can take down your answer. Do you
24 understand that?

25 A. Yes, I do.

1 Q. Okay. And in addition, I know
2 the court reporter has reminded you of this
3 already, but please let me finish my
4 questions. Give your counsel an opportunity
5 to object before you provide your answers,
6 okay?

7 A. Okay.

8 Q. And as we go through the day,
9 if you don't understand a question, please
10 let me know and I will rephrase the question.
11 Otherwise, if you answer the question, I will
12 assume that you understood the question.

13 Do you understand that?

14 A. Yes, I do.

15 Q. Okay. Is there anything that
16 would prevent you from testifying truthfully
17 today?

18 A. There is not.

19 Q. Okay. Do you have any
20 questions before we begin?

21 A. I do not.

22 Q. Okay. Who is representing you
23 here today?

24 A. Tara and Scott.

25 Q. Okay. When was the first time

1 you met Tara?

2 A. We had a phone call last week,
3 I believe, and then I met her yesterday.

4 Q. So last week was the first time
5 you ever spoke with her?

6 A. Yes.

7 Q. When was the first time you
8 ever spoke with an attorney from her firm
9 regarding this case?

10 A. I'm not exactly sure. I had a
11 call with Walmart attorneys, and I'm not sure
12 who was on the phone at that time.

13 Q. And when was that call?

14 A. I'm not sure of the date, but
15 November, maybe, or October.

16 Q. Okay. Before that, have you
17 had any discussions with anyone about this
18 case?

19 A. No.

20 Q. Has anyone ever asked you to
21 produce documents for the case?

22 A. No.

23 Q. Has anyone asked if you have
24 any relevant documents for this case?

25 A. No.

1 Q. Have you ever seen a document
2 request in this case?

3 A. I don't recall, no.

4 Q. Have you ever seen the
5 complaint in this case?

6 A. Yes.

7 Q. What is your understanding of
8 what this case is about?

9 MS. FUMERTON: And I just
10 caution the witness that she can
11 reveal anything that she has learned
12 on her own, but not to reveal any
13 communication with counsel.

14 A. I perused the first few pages,
15 maybe the first five or six pages, and I
16 don't know that I could speak in verbatim to
17 what I saw. I knew it was Ohio over opioid
18 distribution.

19 BY MR. BOWER:

20 Q. Other than that, do you have
21 any understanding of what the case is about?

22 A. No.

23 Q. Okay. When was the first time
24 you learned that Walmart had been sued in
25 connection with this opioid distribution?

1 A. Whenever I had that first phone
2 call with the Walmart attorney in October or
3 November.

4 Q. Are you a current employee of
5 Walmart?

6 A. I am not.

7 Q. When did you end your
8 employment at Walmart?

9 A. In April of 2018.

10 Q. Where do you currently work?

11 A. I work at Louisiana Wholesale
12 Drugs.

13 Q. Okay. And what do you do for
14 Louisiana Wholesale Drugs?

15 A. I'm in purchasing for them.

16 Q. Can you just describe briefly
17 what type of business Louisiana Wholesale
18 Drugs is in. Is it distribution?

19 A. Yes, it's a wholesaler, a
20 regional wholesaler for prescription drugs
21 and OTC items.

22 Q. Who does it provide those items
23 to?

24 A. They have a group of
25 shareholders that own -- it's a co-op that

1 own the wholesale. They provide them to
2 those independent pharmacies in mostly
3 Louisiana, but they're in a few other states
4 as well.

5 Q. Does the Louisiana Wholesale
6 Drugs company distribute Schedule II
7 narcotics?

8 A. Yes, we do.

9 Q. Prescription opiates?

10 A. Yes, they do.

11 Q. They have a suspicious order
12 monitoring system in place?

13 A. I don't purchase those
14 products. I do know that they have a
15 suspicious order monitoring program in place.

16 Q. What products do you purchase
17 for them currently?

18 A. Generics and brand
19 pharmaceuticals.

20 Q. Who is responsible for
21 purchasing Schedule II narcotics for the
22 Louisiana wholesale company?

23 MS. FUMERTON: And I just am
24 going to object to the line of
25 questioning. I think it's appropriate

1 to ask her general --

2 MR. BOWER: I'm not -- you
3 can --

4 MS. FUMERTON: No, no, I'm
5 telling you --

6 MR. BOWER: You can make your
7 objection and we can move on.

8 MS. FUMERTON: Well, no, I'm
9 going to instruct her not to answer.
10 I'm telling you --

11 MR. BOWER: You're instructing
12 her not to answer that?

13 MS. FUMERTON: -- if you start
14 to go into -- this is not a deposition
15 about her current employer. I think
16 general background information is
17 okay. You can ask her general
18 questions of what she does, but their
19 counsel is not here, and she's here
20 as -- in her capacity as a former
21 Walmart employee. And so that's why
22 I'm telling you what my position is
23 with respect to this.

24 MR. BOWER: Tara, I'm not
25 wasting time on the record all day

1 with your speaking objections. You
2 can make your objection and we can
3 move on.

4 MS. FUMERTON: And I'm telling
5 you that I'm not going to let you --

6 MR. BOWER: So if you want
7 to --

8 (Simultaneous discussion
9 interrupted by the reporter.)

10 MR. BOWER: If you want to
11 instruct her not to answer, then do
12 so. If not, make your objection and
13 we'll move on, okay.

14 Can you read back the last
15 question, please.

16 (The following portion of the
17 record was read.)

18 "QUESTION: Who is responsible
19 for purchasing Schedule II narcotics
20 for the Louisiana wholesale company? "

21 (End of readback.)

22 A. I have been instructed by my
23 current employer's attorney to not answer
24 questions about my current job duties.

25 BY MR. BOWER:

1 Q. Are you refusing to answer that
2 question?

3 A. I would prefer to not answer
4 the question.

5 MS. FUMERTON: I'm going to
6 instruct her not to answer the
7 question.

8 MR. BOWER: And what's your
9 basis for that instruction?

10 MS. FUMERTON: Again, because
11 her counsel is not here for her
12 current company. I'm respecting her
13 today, and I'm -- as her counsel here
14 today, I am instructing her not to
15 answer that question because you're
16 getting into the details of a
17 different entity that is not why she's
18 here to testify today.

19 If you want to ask her about
20 whether or not she has -- what her
21 role is in her current job, that's
22 fine. If you start asking her
23 questions about what other people and
24 other individuals did at her current
25 position or her current employer, I'm

1 going to instruct her not to answer.

2 MR. BOWER: Move to strike
3 counsel's colloquy from the record.

4 What is the basis for your
5 objection?

6 MS. FUMERTON: Because her --
7 you have not noticed her up in her
8 capacity as a witness for her current
9 employer. She has been noticed up and
10 you have communicated with me as a --
11 and have asked for her in her position
12 as a former Walmart employee.

13 BY MR. BOWER:

14 Q. Are you going to not answer the
15 question, ma'am?

16 A. Yes, I'm not going to answer
17 the question.

18 Q. Are you going to refuse to
19 answer any questions about your current
20 employment?

21 A. No, I'm okay -- I'm happy to
22 answer questions in what I do in my current
23 employment.

24 Q. Okay. Have you ever purchased
25 Schedule II narcotics for the Louisiana

1 wholesale company?

2 A. I have not.

3 Q. Are you familiar -- strike
4 that.

5 You testified before that you
6 know that the Louisiana wholesale company
7 does, in fact, purchase Schedule II
8 narcotics, correct?

9 A. Correct.

10 Q. How do you know that?

11 A. Because I'm familiar with the
12 book of business that we do at Louisiana
13 Wholesale.

14 Q. And who do they purchase from?

15 MS. FUMERTON: Objection, I'm
16 going to instruct her not to answer.

17 BY MR. BOWER:

18 Q. Are you familiar with that?

19 A. I'm familiar, yes.

20 Q. Are you going to not answer
21 that question as well?

22 MS. FUMERTON: I'm going to
23 instruct her not to answer the
24 question.

25 BY MR. BOWER:

1 Q. Does Ms. Fumerton represent
2 Louisiana Wholesale Drug company?

3 A. No, she does not.

4 Q. Are you going to listen to her
5 instructions?

6 A. Yes.

7 Q. Okay.

8 (Walmart-Little Exhibit 1
9 marked.)

10 MR. BOWER: I would just note
11 for the record while you review
12 Exhibit 1 that we don't know whether
13 my questions are relevant because you
14 won't answer them, so we will keep
15 this deposition open to the extent
16 it's necessary.

17 MS. FUMERTON: I disagree with
18 your characterization because your
19 questions about what Louisiana
20 Wholesale did or did not do is not
21 relevant to this litigation and
22 specifically this deposition.

23 BY MR. BOWER:

24 Q. You've been handed what's been
25 marked as Exhibit 1. Are you familiar with

1 that document?

2 A. Yes, I am.

3 Q. Okay. What is that document?

4 A. This is a résumé that I had
5 uploaded to LinkedIn.

6 Q. Okay. And if you notice,
7 there's no Louisiana Wholesale Drug company
8 mentioned on this document; is that correct?

9 A. That's correct.

10 Q. Is there a reason you haven't
11 updated your LinkedIn profile?

12 A. It's just not something that I
13 actively do.

14 Q. When was the last time you
15 updated it?

16 A. I would probably say, and I
17 don't know for sure, but when I uploaded this
18 document, maybe.

19 Q. Okay. You notice under
20 Experience it says February 2014 to present?

21 A. Yes.

22 Q. You see that?

23 So your LinkedIn profile, then,
24 is not accurate; is that correct?

25 A. Correct.

1 MS. FUMERTON: Objection.

2 Objection, form.

3 And just give me a second.

4 You're both fast talkers, so you need
5 to just pause a second after he asks
6 his question.

7 BY MR. BOWER:

8 Q. Why did you leave Walmart to go
9 to Louisiana Wholesale Drug company?

14 Q. So at the time you were living
15 in Bentonville when you worked for Walmart?

16 A. Correct.

17 Q. And now you've moved back to
18 Louisiana; is that correct?

19 A. Correct.

20 Q. And that's where you're from
21 originally?

22 A. We lived there the ten years
23 prior to moving to Walmart.

24 Q. And that's where you went to
25 college as well, right?

1 A. Yes, correct.

2 Q. I just have a few questions
3 regarding your profile. Other than the fact
4 that you haven't updated it recently, is the
5 experience that you've included here
6 accurate?

7 A. Yes.

8 Q. Okay. I just have a couple of
9 questions then on some of the things you've
10 listed here on your experience. Let's start,
11 I guess, from when you began at Walmart,
12 which was 2007, correct?

13 A. January of 2008.

14 Q. Okay. Did you take a job at
15 Walmart directly after graduating from
16 Louisiana State University?

17 A. No, I graduated from LSU the
18 first time in 1990.

19 Q. Okay.

20 A. I had finished my M.B.A. in May
21 of 2007.

22 Q. What did you do between -- just
23 very briefly, between 1990 and 1993 -- strike
24 that.

25 Were you a registered nurse in

1 1993?

2 A. I think I graduated in '95.

3 Q. Okay.

4 MS. FUMERTON: And you can look
5 at the document too.

6 BY MR. BOWER:

7 Q. Yeah, sure, please look at the
8 document. I'm just trying to get a very
9 brief understanding of your background.

10 I noticed that under Education
11 you have two things listed, Itawamba
12 Community College and then Louisiana State.
13 It appears that you were a Registered Nurse;
14 is that correct?

15 A. I was a Registered Nurse, and
16 this date of completion of 2005 is not
17 accurate. It was 1995.

18 Q. Okay. That clears that up.
19 Were you a practicing nurse
20 from 1995 until 2005 approximately?

21 A. Until 2007.

22 Q. Okay. And where were you
23 employed during that time period?

24 A. There were multiple places. I
25 had worked at Ascension Hospital, at Lake

1 After Hours, which was an acute care setting.

2 I worked at St. Elizabeth Hospital and I
3 worked for Infusion Network.

4 Q. Okay. Thank you for that.

5 Then in 2005 you went to
6 Louisiana State to get your master's degree,
7 correct?

8 A. That's correct.

9 Q. Did you begin working with
10 Walmart directly after graduating with your
11 master's degree?

12 A. About six or seven months
13 later.

14 Q. And what were you hired at
15 Walmart to do?

16 A. To be a buyer in the pharmacy
17 department.

18 Q. In 2008 when you began at
19 Walmart, did you have any specific areas
20 of -- that you were responsible for buying?

21 A. Yes.

22 Q. Okay. What were those areas?

23 A. I don't remember exactly. I
24 know skin health, antibiotics, and I don't
25 really remember the others.

1 Q. Okay. When did you first have
2 responsibility for buying prescription
3 opiates?

4 A. It would have been maybe a year
5 later, a year and a half later, something
6 like that.

7 Q. So sometime in the 2009 time
8 frame?

9 A. Yes.

10 Q. Okay.

11 A. Probably.

12 Q. And at that time, Walmart was
13 already purchasing prescription opiates,
14 correct?

15 A. That's correct.

16 Q. And Walmart was already
17 distributing prescription opiates; is that
18 correct?

19 A. That's correct.

20 Q. Do you have any idea when
21 Walmart began distributing prescription
22 opiates?

23 A. I do not.

24 Q. What change occurred, if any,
25 between the time you began at Walmart and the

1 time you began purchasing prescription
2 opiates?

3 MS. FUMERTON: Objection, form.

4 MR. BOWER: I'll rephrase.

5 BY MR. BOWER:

6 Q. Why did you begin purchasing
7 prescription opiates for Walmart?

8 A. We had some personnel changes,
9 and it was typical for them to change
10 categories and move buyers from different
11 categories for whatever reason at the time.

12 Q. Okay. And what personnel
13 changes occurred during that time period that
14 required you to be involved in purchasing
15 prescription opiates?

16 MS. FUMERTON: Objection, form.

17 MR. BOWER: You can answer.

18 MS. FUMERTON: (Nods head.)

19 A. If I remember right, I think
20 David Badeen had moved to a different
21 position, but I could be a little fuzzy on
22 that.

23 BY MR. BOWER:

24 Q. Okay. We'll have some
25 documents maybe that will refresh your

1 recollection.

2 A. Okay.

3 Q. Okay? And then how long did
4 you purchase prescription opiates for
5 Walmart?

6 A. On and off between that 2009
7 time frame until maybe '16 or '17.

8 Q. So almost through the time you
9 left Walmart, correct?

10 A. Yes. There were some time
11 frames in there that I did not -- a different
12 buyer, another buyer had that responsibility.

13 Q. Can you explain how that works?
14 Why would one buyer come in and have that
15 responsibility and you would not have
16 responsibility?

17 A. It was just changes that they
18 made often to give you experience, or a new
19 buyer came in and they changed the
20 categories. I'm not sure that there was any
21 set reason for that.

22 Q. Okay. During your time period,
23 what other buyers had responsibility for
24 purchasing prescription opiates?

25 A. I know Steve Potts.

1 Q. Okay. Anyone else?

2 A. I'm not sure if there was
3 anyone else.

4 Q. Do you have a general idea of
5 what time period Mr. Potts was involved in
6 purchasing prescription opiates for Walmart?

7 A. I do not remember the years
8 that he was employed in that department.

9 Q. Approximation?

10 A. Maybe 2012-ish. I'm not sure.

11 Q. Okay. Thank you for that.

12 Were you responsible for
13 negotiating the contract terms for purchasing
14 prescription opiates for Walmart?

15 A. Yes.

16 Q. Those terms frequently involved
17 rebates, correct?

18 MS. FUMERTON: Objection, form.

19 A. Some involved rebates.

20 BY MR. BOWER:

21 Q. Most involved rebates. Would
22 you agree with that?

23 MS. FUMERTON: Objection, form.

24 A. I can't remember the specifics
25 of all the contracts.

1 BY MR. BOWER:

2 Q. What's your basis for saying
3 that some involved rebates?

4 A. Well, we had rebates on
5 multiple drugs, not just opioids, on our
6 regular prescription drug business and on
7 prescription opioids. I just don't remember
8 those specifics of contracts.

9 Q. Most of your contracts have
10 rebate provisions, correct?

11 MS. FUMERTON: Objection, form.

12 A. I don't know that "most" is
13 correct. I don't know that.

14 BY MR. BOWER:

15 Q. Do you recall any contract for
16 purchasing prescription opiates that did not
17 have a rebate provision?

18 A. I don't -- I can't recall that,
19 no.

20 Q. You can't recall a single one,
21 correct?

22 A. I can't recall either way
23 without -- it's been a long time since I've
24 looked at those contracts. I don't recall
25 either way.

1 Q. What about the contracts that
2 were in existence in 2016 for purchasing
3 prescription opiates? Do those have rebate
4 provisions?

5 A. I don't recall.

6 Q. Are you aware the country is in
7 the middle of an opioid crisis?

8 MS. FUMERTON: Objection, form.

9 A. I'm aware that there are people
10 that are addicted to opioids and I'm aware
11 that there are people that use prescription
12 opioids for legitimate reasons every day.

13 BY MR. BOWER:

14 Q. Do you think the country is in
15 the middle of an opioid crisis?

16 MS. FUMERTON: Objection, form.

17 A. There's a lot of attention
18 regarding this subject. I haven't looked at
19 documents. I haven't read much about it.
20 I'm not sure how I feel about that. I think
21 "crisis" is a difficult word. I'm not sure
22 how I feel about it.

23 BY MR. BOWER:

24 Q. What word would you use?

25 MS. FUMERTON: Objection, form.

1 A. I think any -- I think
2 addiction to any substance is disheartening
3 and is sad, whether it's opioid or a
4 different substance, and I think there are
5 plenty of issues.

6 BY MR. BOWER:

7 Q. Have you seen any of the TV
8 reports on the opioid crisis?

9 A. I haven't -- I've seen the
10 opioid crisis in the news. I haven't focused
11 or studied what the -- what the facts are
12 behind those, so I'm not familiar with the
13 numbers.

14 Q. Did you ever discuss the opioid
15 problem while you were at Walmart with
16 anybody?

17 MS. FUMERTON: Objection, form.

18 A. You know, we talked about --
19 there were times when there were -- we knew
20 that people had prescriptions, or I knew that
21 people had prescriptions and they weren't
22 using them for legitimate use.

23 If there were ways that we
24 could do things to stay away from -- from
25 selling to those customers or attracting

1 those customers, we would take that. We
2 would -- we would work to put those in place.

3 BY MR. BOWER:

4 Q. And how did you know that
5 people had prescriptions and they weren't
6 using them for legitimate use?

7 A. Well, as a nurse, we had
8 seen -- I've seen people come into the
9 after-hours clinic or to the emergency room,
10 people that you knew were looking for drugs
11 and asking for drugs that probably didn't
12 need those products.

13 Q. And while you were employed at
14 Walmart, did you ever receive e-mails
15 suggesting that Walmart should do more to
16 address the opioid problems?

17 MS. FUMERTON: Objection, form.

18 A. I don't recall that, no.

19 BY MR. BOWER:

20 Q. So you may have received
21 e-mails; you just don't recall; is that
22 correct?

23 MS. FUMERTON: Objection, form.

24 A. I can't recall.

25 BY MR. BOWER:

1 Q. Well, my question is: So you
2 may have received e-mails, but you don't
3 recall receiving them one way or the other,
4 correct?

5 A. Correct.

6 MS. FUMERTON: Give me -- just
7 again, I'm having a little bit of
8 trouble getting an objection in.

9 THE WITNESS: I'm sorry.

10 MS. FUMERTON: Just give it a
11 little bit of pause.

12 BY MR. BOWER:

13 Q. Let's go back to Exhibit 1,
14 just a few more questions on your résumé,
15 okay?

16 A. Yes.

17 Q. Going back to your time from
18 2007 to 2014, you're an Rx buyer. Do you see
19 that on the second page there, about halfway
20 down?

21 A. Yes.

22 Q. Okay. Are those dates accurate
23 there, 2007 to February of 2014? I believe
24 you said it started in 2008, correct?

25 A. Yes, I started in January of

1 2008.

2 Q. And is the end date
3 approximately correct that you were the Rx
4 buyer?

5 A. It would have ended when I left
6 Walmart in April of 2018.

7 Q. Well, I noticed on page 1 you
8 have senior Rx buyer, if you'd turn to
9 page 1. Did you at some point receive a
10 promotion from Rx buyer to senior Rx buyer?

11 A. Yes.

12 Q. Approximately when did you --

13 A. I don't recall that date.
14 Well, February 14th, I guess, according to
15 the résumé.

16 Q. Okay. Well, let me ask it a
17 different way. Did that promotion -- strike
18 that.

19 Would you agree that was a
20 promotion?

21 A. Yes.

22 Q. Did that have any change in
23 your duties and responsibilities?

24 A. I don't recall if we changed
25 categories at that time or not.

1 Q. And when you say categories,
2 what do you mean by categories?

3 A. We divided our business up into
4 disease state categories, so you would
5 have -- you could have the pain category, you
6 could have the GI category, you could have
7 the antibiotic or whatever disease state
8 category. I don't remember if we had eight
9 or nine categories or how many we had.

10 But we divided the drugs up
11 into those categories, and a buyer would have
12 responsibility for a set of those disease
13 state categories.

14 Q. Okay. And then do you recall
15 approximately for what period of time you
16 were responsible for the pain category?

17 A. So I started I think in 2009,
18 around 2009 or 2010. There were times
19 between then and -- I don't know when it
20 actually ended, if it was in 2016 or -- I
21 want to say '16 or '15. I had it for that
22 period, but there were times in between when
23 others may have had it.

24 Q. When those others may have had
25 it, was that in conjunction with you or you

1 were off it at that point and they were on
2 it?

3 A. Yes, I was off and had
4 different categories and they were on it.

5 Q. How would you be informed that
6 you would be off the pain category?

7 A. They would just tell us that
8 they were changing categories up.

9 Q. Who would tell you?

10 A. Usually our vice president.

11 Q. Who was that?

12 A. It was different people at
13 different times.

14 Q. Okay. Well, let's just go
15 through, just to the best of your
16 recollection, who were the vice presidents
17 that would kind of be in charge of assigning
18 categories?

19 A. So --

20 MS. FUMERTON: Objection, form.

21 THE WITNESS: Sorry.

22 A. Sandy Kinsey when I first
23 started.

24 BY MR. BOWER:

25 Q. Okay.

1 A. Then Mark Phillips and then
2 Jinali Desai.

3 Q. And how would they inform you
4 what category you were responsible for?
5 Would it be e-mail, phone call, meeting?

6 A. It was just conversation.

7 Q. And how frequently would this
8 occur?

9 A. Every year, year or so. It
10 wasn't a set time frame, but it happened
11 periodically.

12 Q. Okay. And when the categories
13 were changed, would you receive training or
14 anything in connection with your new
15 assignment?

16 A. There was not formalized
17 training, but you had resources; the buyers
18 that purchased the category before you, your
19 replenishment managers or your other extended
20 team members that would help you with
21 questions if you had questions.

22 Q. How would you -- when the
23 categories changed, how would you familiarize
24 yourself with what was needed for the new
25 category, for example, how much supply was

1 needed?

2 MS. FUMERTON: Objection, form.

3 A. You would review past supply.

4 You had those numbers that you could review.

5 You would -- you would just look at what was

6 going on in the business.

7 BY MR. BOWER:

8 Q. And what numbers would you

9 review?

10 A. We had past script data that

11 was out there that you could see on a certain

12 NDC, what the utilization was.

13 Q. And was that data available

14 for -- through a certain software or data

15 system or how would you access that data?

16 MS. FUMERTON: Objection, form.

17 A. It was available through Retail

18 Link.

19 BY MR. BOWER:

20 Q. And what type of data was

21 available through Retail Link? Was it

22 prescription level data?

23 MS. FUMERTON: Objection, form.

24 A. There was prescription level

25 data. There was sales numbers. There were

1 units. There were store locations. There
2 were -- it was unlimited, really, what the
3 data was in there.

4 BY MR. BOWER:

5 Q. And was the data that you had
6 access to limited to Walmart data, or was it
7 data that was broader than that?

8 MS. FUMERTON: Objection, form.

9 A. It was Walmart data.

10 BY MR. BOWER:

11 Q. Did you have access to any
12 data, for example, for other distributors,
13 such as McKesson?

14 A. No.

15 Q. Did you have access to data for
16 other -- strike that.

17 Did you have access to data for
18 other manufacturers, for example, quotas for
19 prescription opiates?

20 MR. CIULLO: Objection, form.

21 MS. FUMERTON: Objection, form.

22 Yeah, just give us -- you're
23 jumping in a little bit, that's fine.

24 A. No.

25 BY MR. BOWER:

1 Q. As part of your duties and
2 responsibilities for purchasing prescription
3 opiates for Walmart, are you familiar with
4 quotas?

5 MS. FUMERTON: Objection, form.

6 A. I'm aware that there are quotas
7 on some chemicals for opioids, yes.

8 BY MR. BOWER:

9 Q. And what's your understanding
10 of why those quotas are in place?

11 A. I'm not familiar with the
12 reason of why they are in place.

13 Q. Are you aware that Walmart has
14 certain obligations in distributing
15 prescription opiates?

16 MS. FUMERTON: Objection, form.

17 A. Yes.

18 MR. BOWER: What's the nature
19 of that objection?

20 MS. FUMERTON: "Certain
21 obligations" is incredibly vague,
22 especially -- "in distributing
23 prescription opioids" is also
24 extremely vague and could be
25 interpreted very broad or very

1 narrowly.

2 MR. BOWER: Any other
3 objections you have to that, other
4 than vagueness?

5 MS. FUMERTON: Well, I think
6 that can be confusing in that regard
7 as well.

8 BY MR. BOWER:

9 Q. What obligations are you
10 familiar with respect to Walmart's
11 distribution of prescription opiates?

12 MS. FUMERTON: Objection, form.

13 A. I'm not familiar with the
14 specifics of that. I really was focused in
15 my job on negotiating the contracts and the
16 price and making sure we had supply at the
17 store.

18 BY MR. BOWER:

19 Q. You're aware that Walmart is
20 required to have a suspicious order
21 monitoring system in place, correct?

22 A. That's correct.

23 Q. When did you first become aware
24 of that?

25 A. I don't remember the year.

1 Maybe 2010, and that's just a guess on the
2 year.

3 Q. Okay. Did you receive any
4 training at Walmart regarding its obligations
5 to have a suspicious order monitoring
6 program?

7 A. I did not, no.

8 Q. Are you aware that
9 manufacturers as well must have a suspicious
10 order monitoring program in place to monitor
11 the purchases of prescription opiates by
12 distributors?

13 A. I was aware that some
14 manufacturers had suspicious order monitoring
15 in place.

16 Q. And, in fact, Walmart had
17 placed orders that were cut or canceled due
18 to manufacturer's suspicious order
19 monitoring, correct?

20 MS. FUMERTON: Objection, form.

21 A. I'm unsure about cut and
22 canceled. I know that we have questions
23 sometimes from manufacturers if we hit up
24 against that limit.

25 BY MR. BOWER:

1 Q. Has Walmart ever had an order
2 that was canceled because it ordered too many
3 prescription opiates from a manufacturer?

4 MS. FUMERTON: Objection, form.

5 A. I'm am unsure. I did not
6 actually place the orders, so I'm unsure if
7 that happened. I'm just not aware.

8 BY MR. BOWER:

9 Q. You're not able to say whether
10 that ever happened?

11 A. Correct.

12 Q. So it could have happened; you
13 just don't remember?

14 A. I can't recall.

15 Q. It could have happened numerous
16 times; you just don't recall it, correct?

17 MS. FUMERTON: Objection, form.

18 A. Correct.

19 BY MR. BOWER:

20 Q. It could have happened hundreds
21 of times; you don't recall it ever happening,
22 right?

23 MS. FUMERTON: Objection, form.

24 A. If it would have happened a
25 hundred times, I think our replenishment

1 manager would have -- they would have had to
2 have notified me because we would have had an
3 issue with supply at that point.

4 BY MR. BOWER:

5 Q. What do you mean an issue with
6 supply?

7 A. If we were ordering product
8 that we needed and those orders were being
9 cut, we would not have received the product.
10 I would have had out-of-stocks and I would
11 have noticed at that time.

12 Q. And what would you do if you
13 had an out-of-stock?

14 A. I would try to go to a
15 different vendor to get supply.

16 Q. Right. So if a Walmart order
17 had been cut, you would simply go to a
18 different vendor to get supply, correct?

19 MS. FUMERTON: Objection, form.

20 A. Well, it wasn't that we would
21 do that immediately. The only times we would
22 do that is if there was an extended supply
23 disruption in the market, not if one order
24 was cut.

25 BY MR. BOWER:

1 Q. Are you aware of any
2 circumstance where an order was cut and you
3 went to a different vendor to get supply?

4 MS. FUMERTON: Objection, form.

5 A. I'm -- I'm not aware of a
6 situation where an order was cut and I went
7 to a different vendor.

8 BY MR. BOWER:

9 Q. Are you aware of a situation
10 where an order was not filled and you went to
11 a different vendor due to a manufacturer's
12 suspicious order monitoring program?

13 MS. FUMERTON: Objection, form.

14 A. In my role I wouldn't have been
15 aware of orders that were cut or not filled.

16 BY MR. BOWER:

17 Q. Just so the record is clear,
18 you're not aware of that ever happening; is
19 that correct?

20 A. Not that I can recall --

21 MS. FUMERTON: Objection, form.

22 THE WITNESS: Sorry.

23 BY MR. BOWER:

24 Q. So it could have happened
25 several times; you may not have been aware of

1 it, right?

2 MS. FUMERTON: Objection, form.

3 A. It could have happened and I
4 was not aware of it, yes.

5 BY MR. BOWER:

6 Q. Okay. Who at Walmart would be
7 aware of it?

8 MS. FUMERTON: Objection, form.

9 A. We had replenishment managers
10 that were the ones that actually placed the
11 POs and talked to the manufacturers if those
12 were not filled.

13 BY MR. BOWER:

14 Q. And who were the replenishment
15 managers that were responsible for
16 prescription opiates during your time period?

17 MS. FUMERTON: Objection, form.

18 A. I'm not -- I know Linda Wilson
19 was one. I'm not sure of others. They would
20 change their categories just like the buyers
21 would change their categories.

22 BY MR. BOWER:

23 Q. Are there any other
24 replenishment managers that you worked with
25 on prescription opiates?

1 A. Not that I recall at this time.

2 Q. So to the best of your
3 recollection, Ms. Wilson had that
4 responsibility for a lengthy period of time
5 at Walmart, correct?

6 MS. FUMERTON: Objection, form.

7 A. I know that she had it for a
8 period of time that I had it. I just can't
9 remember if someone else had it as well.

10 BY MR. BOWER:

11 Q. Okay. Generally speaking,
12 would there be one replenishment manager
13 responsible for a category as well, or were
14 they organized differently?

15 A. There would be a replenishment
16 manager for each category, but then they also
17 had responsibility for relationships with
18 manufacturers.

19 Q. Okay. And what was their
20 responsibility for relationship with
21 manufacturers?

22 A. They would do the ordering for
23 that complete manufacturer.

24 Q. Okay. So in other words, there
25 was one replenishment manager that was

1 responsible for each manufacturer; is that
2 correct?

3 MS. FUMERTON: Objection, form.

4 A. As I remember it, yes.

5 BY MR. BOWER:

6 Q. Do you recall what manufacturer
7 Ms. Wilson was responsible for?

8 A. I do not recall.

9 Q. Do you recall who was
10 responsible for Purdue replenishment?

11 A. I do not.

12 Q. Mallinckrodt replenishment?

13 A. I do not.

14 MS. FUMERTON: Objection, form.

15 BY MR. BOWER:

16 Q. Actavis replenishment?

17 MS. FUMERTON: Objection, form.

18 A. I do not.

19 BY MR. BOWER:

20 Q. All right. Let's go back to
21 your Exhibit 1 for a moment.

22 A. Okay.

23 Q. I want to go turn to page 2 for
24 a moment and I want to ask a couple of
25 questions on those bullet points on kind of

1 the top half of the page there. One of the
2 bullet points you note that you successfully
3 led category participation in hydrocodone
4 reclassification.

5 Do you see that?

6 A. Yes, I see that.

7 Q. What does that mean?

8 A. I was a conduit on the
9 merchandising side for the C-II manufacturers
10 in our warehousing department in the moving
11 of our vault at a time period while we were
12 there.

13 Q. What does category
14 participation mean?

15 A. That would be the merchandising
16 category.

17 Q. Okay. What manufacturer did
18 you work with in context with that effort?

19 MS. FUMERTON: Objection, form.

20 A. Mallinckrodt, QualiTest. I
21 don't remember who else we would have had
22 that were C-II manufacturers at the time.

23 BY MR. BOWER:

24 Q. And what time period was that
25 approximately?

1 A. I'm not sure. It was maybe
2 2012 or '13. I'm not sure.

3 Q. How would you communicate with
4 them?

5 MS. FUMERTON: Objection, form.

6 A. I would generally call them or
7 send an e-mail.

8 BY MR. BOWER:

9 Q. How frequently would you send
10 e-mails to those folks?

11 MS. FUMERTON: Objection, form.

12 BY MR. BOWER:

13 Q. For example, someone at
14 Mallinckrodt?

15 MS. FUMERTON: Objection, form.

16 MR. BOWER: What's the nature
17 of that objection?

18 MS. FUMERTON: How frequently
19 would you send e-mails to those folks
20 about what?

21 MR. BOWER: About what we're
22 talking about, about the
23 hydrocodone --

24 MS. FUMERTON: What are we
25 talking about?

1 MR. BOWER: Okay. I'll
2 rephrase because I think the record is
3 clear and you're just objecting to
4 every question. So I'll rephrase.

5 MS. FUMERTON: I'm not
6 objecting to every question. The
7 record is not clear.

8 BY MR. BOWER:

9 Q. How frequently would you
10 discuss hydrocodone reclassification with
11 Mallinckrodt in the 2012-2013 time period?

12 MS. FUMERTON: Objection, form.

13 A. I can't recall, but, I mean,
14 if -- once every couple of weeks. As we got
15 closer to the actual movement, more often.

16 BY MR. BOWER:

17 Q. Going up a couple of bullet
18 points there, increased cash prescriptions on
19 certain items up to 45%.

20 Do you see that?

21 A. Yes.

22 Q. What does that mean, cash
23 prescriptions on certain items up to 45%?

24 A. That was an initiative I had
25 done with a prescription product called

1 Latisse for eyelash growth. It was a product
2 that was not generally reimbursed by
3 insurance plans because it was a vanity-type
4 product, so I had worked with the
5 manufacturer to secure a lower price.

6 We offered it for a significant
7 discount for customers, and then we -- I
8 worked with our marketing team to have that
9 put in our Sunday circular, and we put some
10 signage at stores just to tell customers that
11 we had a lower price on that item.

12 Q. Did you ever work with the
13 marketing team on prescription opiates?

14 MS. FUMERTON: Objection, form.

15 A. I did not.

16 BY MR. BOWER:

17 Q. Did Walmart ever receive a
18 marketing fee for prescription opiates?

19 MS. FUMERTON: Objection, form.

20 MR. CIULLO: Objection, form.

21 A. Not that I'm aware of.

22 BY MR. BOWER:

23 Q. Did you ever sign any contracts
24 where Walmart received a marketing fee for
25 prescription opiates?

1 MR. CIULLO: Objection, form.

2 MS. FUMERTON: Objection, form.

3 A. If that had happened, it
4 wouldn't be for marketing to a consumer
5 level. It would really just be a rebate or a
6 cost of good adjustment.

7 BY MR. BOWER:

8 Q. What's your basis for that
9 statement?

10 A. Because we never did anything
11 that would promote an opioid to the customer,
12 to the end customer user, the patient that
13 would pick up the prescription.

14 Q. And how do you know that?

15 A. Because we had a pretty firm
16 stance on that while I was there.

17 Q. And where did you learn of that
18 stance?

19 A. I had asked to put a cough
20 medicine on the \$4 program at one time and
21 was told that anything with controlled
22 substances, we generally would not advertise
23 or talk to the consumer about.

24 Q. Would you talk to your
25 pharmacists about those prescription opiates?

1 MS. FUMERTON: Objection, form.

2 A. We would have done information
3 or education if we needed to. If there was a
4 new brand that came out, we may would educate
5 them that a new product was out, but we would
6 do that with any new product that hit the
7 market. It wasn't specific to an opioid.

8 BY MR. BOWER:

9 Q. Right, but when an opioid
10 product was hitting the market, Walmart would
11 educate its pharmacists about that product,
12 correct?

13 MS. FUMERTON: Objection, form.

14 A. I can't recall if we did or if
15 we did not. But we did at certain times send
16 information to the pharmacists about new
17 drugs that came to market. We didn't do it
18 about every drug that came to market, and I
19 don't recall which would be the ones that we
20 did or we did not do.

21 BY MR. BOWER:

22 Q. Do you recall educating your
23 pharmacists on fentanyl when it hit the
24 market?

25 MS. FUMERTON: Objection, form.

1 A. Well, fentanyl would have
2 already been in the market when I started.

3 BY MR. BOWER:

4 Q. I'll strike that then.

5 Do you recall educating your
6 pharmacists on new fentanyl products when
7 they hit the market?

8 MS. FUMERTON: Objection, form.

9 A. We may have on the new
10 abuse-deterrent fentanyl that came out when I
11 was in that position.

12 BY MR. BOWER:

13 Q. What's the abuse-deterrent
14 fentanyl that you're referring to?

15 A. It would have been the fentanyl
16 matrix patch.

17 Q. When did that come out?

18 A. I don't remember the year, but
19 maybe 2010.

20 Q. And who would have provided
21 that information that you passed on to your
22 pharmacists? That would have come from the
23 manufacturer, right?

24 MS. FUMERTON: Objection, form.

25 A. I -- for that particular item,

1 it was a generic item. Generally, those
2 manufacturers wouldn't provide any kind of an
3 information sheet. I don't know if we -- we
4 had an internal communication mechanism. It
5 was called COMAC at one time or Leadership
6 Weekly, where I could put information in
7 there to the stores.

8 I may have put, hey, this new
9 abuse-deterrent fentanyl is out and these are
10 the new item numbers, but I don't recall from
11 2010 what I did on that launch.

12 BY MR. BOWER:

13 Q. So this co- -- was it COMAC
14 that you referred to?

15 A. It was called COMAC.

16 Q. Is that a way that Walmart
17 used -- strike that.

18 Did Walmart use COMAC to
19 communicate with its pharmacists?

20 A. Yes.

21 Q. Okay. Would Walmart announce
22 new drugs in COMAC?

23 MS. FUMERTON: Objection, form.

24 MR. BOWER: Strike that.

25 BY MR. BOWER:

1 Q. When new drugs became
2 available, would Walmart make those
3 announcements in COMAC?

4 MS. FUMERTON: Objection, form.

5 A. We could use that vehicle to do
6 that, yes.

7 BY MR. BOWER:

8 Q. What other vehicles could you
9 use?

10 A. That was really the only
11 vehicle to communicate to pharmacists.

12 Q. Right. So when you said --
13 your answer was we could use that vehicle, so
14 that suggests to me --

15 A. Well, the COMAC --

16 Q. -- that suggests to me that
17 there were other vehicles available, okay?
18 So I just want to make the record clear.

19 The question was: When new
20 drugs became available, would Walmart make
21 those announcements in COMAC. Can you please
22 answer that question?

23 MS. FUMERTON: Objection, form.

24 A. We could put those in COMAC,
25 yes. What I wanted to make sure that I was

1 clear on is that COMAC could be used for
2 other communications. It was not only used
3 for new drug communications to pharmacists.

4 BY MR. BOWER:

5 Q. Okay. And I appreciate that
6 clarity, but my question didn't -- wasn't
7 asking about COMAC; it was simply asking
8 about whether it could be used, okay?

9 A. Uh-huh.

10 Q. Did Walmart use COMAC to inform
11 pharmacists about the qualities of new drugs?

12 MS. FUMERTON: Objection, form.

13 A. I can't -- I can't remember
14 that.

15 BY MR. BOWER:

16 Q. Did Walmart include information
17 in COMAC that it received from manufacturers
18 about new drug launches?

19 MS. FUMERTON: Objection, form.

20 A. On brand launches, we would
21 have used COMAC to communicate that, but
22 it -- it wasn't that we did every drug in
23 that. It was instances here and there, and
24 it was both C-IIs and non-C-II items as well.

25 BY MR. BOWER:

1 Q. Okay. Going back to your
2 résumé for a moment, back still on the second
3 page. I just have a couple more factual
4 questions about what -- kind of how the
5 business worked.

6 One of the bullet points
7 mentions spearheaded a new procurement model
8 by driving profit by lowering acquisition
9 costs on a subset of items. What does that
10 refer to?

11 A. So there were -- when there
12 were items in the market that were hard to
13 get or were in short supply, I had worked
14 with ANDA to be able to purchase from ANDA to
15 get some of those generic products and have
16 those sent to our stores.

17 Q. Did those include prescription
18 opiates?

19 A. They did not.

20 Q. Was there ever a time in your
21 employment at Walmart where prescription
22 opiates were hard to get from your
23 perspective?

24 MS. FUMERTON: Objection, form.

25 A. Yes.

1 BY MR. BOWER:

2 Q. What would you do during those
3 circumstances?

4 A. We would do the same we would
5 do with any drug; we would look for
6 additional supply in the market.

7 Q. And the bullet point above that
8 where you mention introducing enhanced
9 supplier onboarding process. What does that
10 refer to?

11 MS. FUMERTON: Are you on the
12 next page?

13 MR. BOWER: No.

14 MS. FUMERTON: Just so she can
15 follow.

16 MR. BOWER: No, sorry. The
17 second bullet point from the top,
18 partnered with cross-functional team
19 members to introduce enhanced supplier
20 onboarding process.

21 A. When we brought a new supplier
22 into Walmart, we would set them up with a
23 supplier agreement and then we had a history
24 of just kind of pushing them off to
25 replenishment at that time to cut the orders

1 or work on the orders.

2 Replenishment had some feedback
3 that there were additional things they had
4 wanted the buyers to help with, so I just
5 worked with replenishment to put together a
6 program that would make sure the vendors were
7 able to get their EDI access up, that they
8 understood the things that Walmart wanted in
9 place, that they knew that they needed to
10 send a back order report, that they needed to
11 call and communicate different things with
12 Walmart.

13 So they didn't just -- there
14 were some vendors that would just think they
15 could -- we would sign the contract and then
16 their responsibility was over, and we would
17 be short and not have product that we needed.

18 BY MR. BOWER:

19 Q. Okay. You mentioned EEI
20 access; is that correct?

21 A. EDI.

22 Q. EDI access. Okay.

23 And what is that?

24 A. That's an electronic way that
25 you send purchase orders to the vendors so

1 that they can fill the purchase orders.

2 Q. Would purchase orders for
3 prescription opiates go through that process?

4 A. I'm assuming all purchase
5 orders went through that process.

6 Q. And the first bullet point
7 there on that page, Implemented a redesigned
8 rebate tracking and collection process, do
9 you see that?

10 A. Yes, I do.

11 Q. What does that refer to?

12 A. So we had various rebates from
13 various manufacturers. During some
14 restructuring internally, the group that had
15 tracked those originally, it just kind of got
16 put by the wayside, and one day we realized
17 we were behind on keeping track of when those
18 dollars came in.

19 So I worked with our assistants
20 just to put together really an Excel
21 spreadsheet to track who should be sending
22 rebates, what quarters and making sure that
23 those checks came in.

24 Q. And who was kind of the -- in
25 charge of putting together the spreadsheet?

1 A. Well, the assistants made their
2 own spreadsheets based off of the information
3 that we had in our contracts.

4 Q. Okay. Were those spreadsheets
5 saved anywhere in particular, where everyone
6 could have access to them?

7 A. I'm not sure.

8 Q. Did you ever -- did you have
9 access to those spreadsheets?

10 A. I do not.

11 Q. Did you, when you were employed
12 at Walmart, have access to those
13 spreadsheets?

14 A. I -- I never tried to access.
15 I would just meet with them to find out, and
16 they would bring their copies. It wasn't
17 anything that I was trying to access.

18 Q. Okay. And who would you meet
19 with in connection with these rebate
20 spreadsheets?

21 A. Our two assistants, Candace
22 Baker and Rhonda Thomas.

23 Q. Were they -- you mentioned --
24 strike that.

25 You mentioned our two

1 assistants. What do you mean by our two
2 assistants?

3 A. Our department.

4 Q. Is that the purchasing
5 department?

6 A. The pharmacy merchandising
7 department.

8 Q. So those assistants you
9 mentioned, would they be responsible for
10 those spreadsheets for rebates to the extent
11 they included prescription opiates?

12 MS. FUMERTON: Objection, form.

13 A. We received rebates from
14 multiple manufacturers.

15 BY MR. BOWER:

16 Q. Right, and so if those rebates
17 were for prescription opiates, they would
18 have been included in those spreadsheets,
19 correct?

20 MS. FUMERTON: Objection, form.

21 A. They could be included in those
22 spreadsheets, but it wouldn't -- it wouldn't
23 dissect if it was for opioids or not, because
24 there were manufacturers like QualiTest that
25 we bought regular products from and we bought

1 opioids from as well.

2 BY MR. BOWER:

3 Q. So those rebate numbers would
4 have included opiates and other drugs; is
5 that correct?

6 A. That's correct.

7 Q. You mentioned -- what was the
8 company you mentioned, QualiTest; is that
9 correct?

10 A. QualiTest.

11 Q. Did you have a rebate with them
12 with respect to prescription opiates?

13 MS. FUMERTON: Objection, form.

14 A. I can't remember who we had the
15 rebates with.

16 BY MR. BOWER:

17 Q. Do you recall purchasing
18 prescription opiates from QualiTest?

19 A. I do.

20 Q. What prescription opiates do
21 you recall purchasing from them?

22 A. Hydrocodone is one.

23 Q. Did that contract have a
24 rebate?

25 MS. FUMERTON: Objection, form.

1 A. I don't recall that.

2 BY MR. BOWER:

3 Q. And I just want to make sure
4 that when you gave that answer the record is
5 clear. When you say I don't recall that,
6 does that mean it could have and you just
7 don't recall or you don't recall that
8 contract having a rebate?

9 A. It could have, and I just don't
10 remember if it did or not.

11 Q. Okay. Just a couple more
12 questions on your résumé. Going back to the
13 first page, second bullet from the bottom,
14 Introduced an audit process.

15 Do you see that?

16 A. Yes.

17 Q. What was that process?

18 A. So that was really just kind of
19 keying up a relationship with our post-audit
20 department in Walmart to set up timely
21 meetings to go over claims.

22 Q. Was there someone in particular
23 that you worked with in the post-audit
24 department with respect to your
25 responsibility for the pain category

1 purchasing?

2 A. There was not just one person.

3 The post-audits were done by manufacturer,

4 not by category, and there was a team in

5 post-audit. We had a Walmart post-audit team

6 and he had outside audit teams as well.

7 Q. What do you mean you had

8 outside audit teams? Can you describe what

9 that means?

10 A. There were outside companies.

11 After Walmart post-audit would review all of

12 our transactions they would go to outside

13 audit teams to review as well.

14 Q. So would Walmart provide its

15 transaction history to those outside audit

16 teams?

17 MS. FUMERTON: Objection, form.

18 A. I'm unsure of how they got

19 their information.

20 BY MR. BOWER:

21 Q. Do you know who would know

22 that -- that answer?

23 A. I would imagine Walmart

24 post-audit team.

25 Q. Okay. And are you familiar

1 with anyone at the Walmart post-audit team
2 who worked with any of the manufacturers of
3 prescription opiates?

4 MS. FUMERTON: Objection, form.

5 A. Could you repeat that question?

6 BY MR. BOWER:

7 Q. Sure.

8 Are you familiar or can you
9 name for us today any folks at the Walmart
10 post-audit team who worked on or with the
11 manufacturers of prescription opiates that
12 Walmart purchased?

13 MS. FUMERTON: Objection, form.

14 A. So the whole post-audit team
15 would have worked with all manufacturers, not
16 specific. They weren't assigned by specific
17 manufacturer or by products.

18 BY MR. BOWER:

19 Q. Okay.

20 A. That I'm aware of.

21 Q. Maybe I misunderstood your
22 testimony. I thought you said that the
23 post-audit team was assigned to a specific
24 manufacturer.

25 A. They would go through all of

1 our manufacturer transactions.

2 Q. So there's one post-audit team
3 that's responsible for all manufacturers; is
4 that correct?

5 A. Correct.

6 MS. FUMERTON: Objection, form.

7 BY MR. BOWER:

8 Q. And who were the folks --
9 strike that.

10 How was the post-audit team
11 structured, if you know?

12 A. I do not know.

13 Q. Who were your contacts with the
14 post-audit team?

15 A. So through the years we had
16 multiple different contacts through the
17 post-audit team. They would change just as
18 often as -- like our categories would change,
19 and I'm not sure that I remember every --
20 everyone's name.

21 Q. What names do you remember?

22 A. I remember Crystal Varela and
23 Deborah Foepel, Matt Owens, and I don't
24 really recall any other names.

25 Q. So going back to the bullet

1 point here where you say introduced an audit
2 process, was that in connection with the
3 post-audit work by the team?

4 MS. FUMERTON: Objection, form.

5 A. Yes. Prior to that, post-audit
6 would come and they would just drop off
7 claims and the buyers would have to go
8 through the claims, and it was tedious, and
9 we generally had a lot of questions about
10 claims and things that were on the claims.

11 So I really just kind of
12 spearheaded could we meet every two weeks so
13 that I could ask the in-depth questions that
14 I had on what they were trying to claim and
15 get back from manufacturers.

16 BY MR. BOWER:

17 Q. So you would ask these
18 questions to the Walmart post-audit team; is
19 that correct?

20 A. Correct.

21 Q. And what were your in-depth
22 questions based on? Were they based on
23 purchasing data?

24 A. Well, they could be --

25 MS. FUMERTON: Objection, form.

1 A. They could be based on
2 purchasing data. They could be based on
3 whatever the claim was for. There were
4 varied reasons for the claims, and there
5 were -- I would get a general sense of what
6 the claim was about and read through and ask
7 any questions that I had at that point.

8 BY MR. BOWER:

9 Q. In connection with those duties
10 and responsibilities, would you review the
11 purchase data --

12 MS. FUMERTON: Objection.

13 BY MR. BOWER:

14 Q. -- of those manufacturers?

15 MS. FUMERTON: Objection, form.

16 A. There could have been an
17 instance that we looked at purchase data.

18 BY MR. BOWER:

19 Q. What data did you have access
20 to with respect to purchases Walmart made
21 from manufacturers?

22 A. I had sales data out from the
23 store, prescription data. There may have
24 been purchase data that I was -- had access
25 to, but it was not anything that I -- I

1 pulled myself. If I was looking for purchase
2 data, I would have asked somebody else for
3 it.

4 Q. And who would you ask for it?

5 A. We had planning teams or
6 business analytics that would pull that data,
7 or replenishment.

8 Q. And would you use the business
9 analytics or replenishment teams to try to
10 determine what next year's requirements might
11 be for a specific product?

12 MS. FUMERTON: Objection, form.

13 A. We were not tasked with looking
14 at budgeting for the next year. The business
15 analytics team or planners or whatever they
16 called them at the time were the teams that
17 would put that together.

18 BY MR. BOWER:

19 Q. Okay. Was there anyone in
20 particular on those teams that was
21 responsible for prescription opiates?

22 A. Not that I recall.

23 Q. Well, who on those teams would
24 have been responsible for making those
25 forecasts?

1 MS. FUMERTON: Objection, form.

2 A. They had teams of four or five
3 different people at different times, and
4 they -- their personnel changed out
5 frequently as well.

6 BY MR. BOWER:

7 Q. Well, because a part of your
8 responsibility, you had to know what products
9 you needed to purchase, correct?

10 A. Correct.

11 Q. And you had to know how much
12 you needed to purchase, right?

13 A. Correct.

14 Q. Okay. So, for example,
15 hydrocodone, how would you know what the --
16 Walmart's needs would be for the following
17 year?

18 A. So the responsibilities that I
19 had were deciding on the manufacturers and
20 securing the lowest price that I could for
21 the customer and ensuring that we had enough
22 product to get to the stores.

23 Volumes for purchase orders and
24 things like that came from the replenishment
25 department.

1 Q. Okay. I just want to focus for
2 a moment on when you say ensuring that we had
3 enough product to get to the stores.

4 A. Yes.

5 Q. How would you know how much
6 product the stores needed?

7 A. It wouldn't be brought to my
8 attention until we had out-of-stocks at the
9 store. If there were out-of-stocks that were
10 for extended periods of time, then the buyer
11 would understand that and would have to start
12 looking for additional supply.

13 MS. FUMERTON: We've been going
14 around an hour. Can we take a break?

15 MR. BOWER: Sure.

16 THE VIDEOGRAPHER: Going off
17 the record, 9:03 a.m.

18 (Recess taken, 9:03 a.m. to
19 9:24 a.m.)

20 THE VIDEOGRAPHER: Back on
21 record at 9:24 a.m.

22 (Walmart-Little Exhibit 2
23 marked.)

24 BY MR. BOWER:

25 Q. I'm going to hand you what's

1 been marked as Exhibit 2 to today's
2 deposition. Just take a moment and review
3 that document.

4 And for the record, the
5 document is Bates-labeled WMT_MDL, and then
6 it's 000025989.

7 (Document review.)

8 A. Okay.

9 MS. FUMERTON: Zach, is the
10 writing -- was that on there when it
11 was produced?

12 MR. BOWER: Yeah.

13 MS. FUMERTON: Okay.

14 MR. BOWER: I believe so. I
15 mean, as it was produced?

16 MS. FUMERTON: Yeah.

17 MR. BOWER: Okay. Yeah, I
18 don't believe it's -- I don't know if
19 it's her writing. I'm going to ask --

20 MS. FUMERTON: Sure. No, no.
21 I guess my question is it's not yours;
22 it's somebody else's.

23 MR. BOWER: No. So to the best
24 of my understanding, it's not ours.

25 MS. FUMERTON: Okay.

1 MR. CIULLO: You don't happen
2 to have an extra copy, do you?

3 MR. BOWER: Oh, we didn't pass
4 them out? Did he pass them out?

5 (Comments off the stenographic
6 record.)

7 BY MR. BOWER:

8 Q. Have you had a chance to read
9 the document, ma'am?

10 A. Yes, I did.

11 Q. Does this document look
12 familiar to you?

13 A. It does not.

14 Q. It does not, okay.

15 Would you be surprised if this
16 came from your custodial file?

17 A. No, I would not.

18 Q. And why not?

19 A. Well, we -- A, I probably don't
20 understand what "custodial file" is, so I
21 might need clarification on that.

22 Q. Okay. Do you
23 understanding that Walmart -- strike that.

24 Do you have any understanding
25 that Walmart has produced documents to

1 plaintiffs in this case?

2 MS. FUMERTON: Objection. I
3 just caution her that to the extent
4 that we've had any conversations, she
5 cannot reveal the content of those
6 conversations.

7 MR. BOWER: I'll rephrase the
8 question.

9 BY MR. BOWER:

10 Q. You mentioned before you took
11 over for Mr. Badeen, correct?

12 A. That's correct.

13 Q. And this is a contract that
14 he's identified on. Do you see him on the
15 first page there?

16 A. Yes.

17 Q. You see that? And it reflects
18 that it's a modification to an existing
19 agreement, correct?

20 A. Correct.

21 Q. So it wouldn't be surprising,
22 then, that this would be part of your
23 business records of Walmart, right?

24 MS. FUMERTON: Objection, form.

25 A. It wouldn't surprise me if this

1 was part of Walmart's records.

2 BY MR. BOWER:

3 Q. Right.

4 A. I don't know if it was part of
5 my records.

6 Q. Okay. Well, at some point you
7 became responsible for purchasing oxycodone,
8 correct, for Walmart?

9 A. That is correct.

10 Q. And at some point you became
11 responsible for purchasing hydrocodone for
12 Walmart, correct?

13 A. That is correct.

14 Q. And those two products are
15 reflected here, correct?

16 A. That is correct.

17 Q. And this document reflects that
18 these products, oxycodone and hydrocodone,
19 were eligible for [REDACTED] rebate from
20 Mallinckrodt; is that correct?

21 A. That is correct.

22 Q. And further, this document
23 refers to an existing contract dated
24 April 15th, 2001, correct?

25 A. That is correct.

1 Q. So would you agree that this
2 document reflects that Walmart did, in fact,
3 have rebate agreements for opioid products?

4 MS. FUMERTON: Objection, form.

5 A. Typically, if I had a contract,
6 it would be signed. I wasn't employed there
7 at this time, so I'm not -- I'm not sure if
8 this was executed or not executed.

9 MS. FUMERTON: Zach, just so
10 that the record is clear, I think you
11 said mistakenly that it was eligible
12 for a 50%.

13 MR. BOWER: [REDACTED].

14 MS. FUMERTON: Yeah. I just
15 wanted to make sure the record --

16 MR. BOWER: Sorry, yeah, [REDACTED]

17 MS. FUMERTON: It's [REDACTED].

18 BY MR. BOWER:

19 Q. So do you see anywhere in the
20 correspondence from Mallinckrodt to
21 Mr. Badeen that requires a signature for the
22 contract to be accepted?

23 A. I do not see that on here.

24 Q. Do you have any reason to
25 believe that this contract was not, in fact,

1 accepted?

2 A. I can't tell if it was or was
3 not.

4 MR. BOWER: Can you just read
5 back my last question?

6 (The following portion of the
7 record was read.)

8 "QUESTION: Do you have any
9 reason to believe that this contract
10 was not, in fact, accepted?"

11 (End of readback.)

12 MS. FUMERTON: Objection, form.

13 A. I don't have -- I don't have
14 any reason to believe it was or was not put
15 into effect.

16 BY MR. BOWER:

17 Q. Well, when you took over the
18 responsibility for the pain category, was
19 Walmart currently purchasing hydrocodone from
20 Mallinckrodt?

21 A. I don't remember who we were
22 purchasing from at that time.

23 Q. Who did you purchase
24 hydrocodone from when you had that
25 responsibility?

1 MS. FUMERTON: Objection, form.

2 A. I purchased it from different
3 manufacturers at different times.

4 BY MR. BOWER:

5 Q. Was Mallinckrodt one of those
6 manufacturers?

7 A. Yes, they were.

8 Q. What other manufacturers did
9 you purchase hydrocodone from for Walmart?

10 A. I do remember QualiTest was
11 one. I remember KVK was one. I don't
12 remember any others.

13 Q. In connection with preparing
14 for your deposition today, did you review
15 documents?

16 A. I reviewed some documents, yes.

17 Q. Were those documents provided
18 to you by counsel for Walmart?

19 A. They were provided by my
20 counsel.

21 Q. Is that your counsel that's
22 here today?

23 A. Yes.

24 Q. And they're counsel for
25 Walmart, correct?

1 A. I assume.

2 Q. Is that your understanding?

3 A. Yes.

4 Q. What is your understanding as
5 to who Ms. Fumerton represents?

6 A. She is representing me.

7 Q. Are you paying her bills?

8 A. I am not paying her bills.

9 Q. Do you know who is paying her
10 bills?

11 A. Walmart is paying her.

12 Q. Walmart is paying her bills on
13 your behalf, correct?

14 A. Yes.

15 Q. So she's representing both you
16 and Walmart today? Is that your
17 understanding?

18 A. Yes.

19 Q. How much time did you spend
20 preparing for today's deposition?

21 A. We met yesterday.

22 Q. And how long did you meet for?

23 A. Yesterday during the day, eight
24 hours.

25 Q. Okay. And who was present for

1 that meeting?

2 A. Tara, Scott and Jennifer.

3 Q. Anyone else?

4 A. There were a couple of people
5 on the phone.

6 Q. Who was on the phone?

7 A. I don't remember who was on the
8 phone. Carl from Walmart, and I don't
9 remember.

10 Q. Okay. Other than speaking with
11 counsel, did you speak with anyone else about
12 this case prior to today?

13 A. No.

14 Q. Did you speak with any folks at
15 Walmart about the case?

16 A. No.

17 Q. Speak with Mr. Badeen?

18 A. No.

19 Q. No?

20 Have you reviewed any written
21 material -- written transcripts of other
22 folks' testimony?

23 A. I have not.

24 Q. The writing on the top of this
25 document, does that look familiar to you --

1 A. No.

2 Q. -- that handwriting?

3 A. It doesn't.

4 Q. Not your handwriting to the
5 best of your recollection?

6 A. It's not my handwriting.

7 Q. Okay. Do you know what the
8 number 32 in the top left would have referred
9 to?

10 A. I do not.

11 Q. When you took over the pain
12 category from Mr. Badeen, was he leaving
13 Walmart at that point?

14 A. He was moving to a new
15 position.

16 Q. Do you know what position he
17 moved to?

18 A. It was within pharmacy with --
19 I don't remember the exact position, no.

20 Q. Did Mr. Badeen provide you any
21 training with respect to the pain category
22 when you took over the purchasing
23 responsibilities for Walmart?

24 A. If I had questions about the
25 category, I could go to him and he would

1 answer those questions, yes.

2 Q. Did you have any questions that
3 you recall?

4 A. I can't recall.

5 Q. You don't recall having any
6 questions?

7 MS. FUMERTON: Objection, form.

8 A. I don't recall right now, no.

9 BY MR. BOWER:

10 Q. As you sit here today, you
11 don't recall ever having any questions about
12 purchasing for the pain category; is that
13 correct?

14 MS. FUMERTON: Objection, form.

15 A. I -- I'm sure I had a question.
16 What the question was, I can't recall.

17 BY MR. BOWER:

18 Q. Okay. Did you ever recall
19 asking Mr. Badeen anything about purchasing
20 oxycodone?

21 A. I can't recall.

22 Q. Other than Mr. Badeen, anyone
23 else that you would have asked questions to
24 about purchasing for the pain category?

25 A. I would have talked to my vice

1 president at the time. I would have talked
2 to replenishment managers.

3 Q. Did you receive any formal or
4 informal training when you took over
5 purchasing responsibility for the pain
6 category?

7 MS. FUMERTON: Objection, form.

8 A. No.

9 MS. FUMERTON: Give me time.

10 THE WITNESS: I'm sorry.

11 MS. FUMERTON: Thank you.

12 BY MR. BOWER:

13 Q. When you took over purchasing
14 pain products for Walmart, how did you
15 familiarize yourself with the products it was
16 already purchasing?

17 A. I would just review items that
18 were in that category. Being a nurse and
19 working in that department already, I was
20 familiar with -- with all the items of the
21 department, so it wasn't -- I didn't feel
22 like I needed to focus at that time on what
23 categories -- what items were in the
24 category.

25 Q. How did you know what items

1 were in the category? Did anyone provide you
2 a list?

3 A. No.

4 Q. How did you know?

5 A. You have vendors that reach out
6 to you to talk to you about items, you review
7 items that were there. We had -- I'm not
8 sure I know how to answer that. It was
9 just -- it was just kind of -- to me it was
10 second nature, what items we had. I --

11 Q. How did you know, for example,
12 what products you needed to purchase for
13 Walmart?

14 MS. FUMERTON: Objection, form.

15 A. So I didn't cut the POs. If a
16 vendor came to me to talk about pricing on an
17 item, if I was out of stock on an item, then
18 I would work and negotiate and make a
19 decision on that item.

20 BY MR. BOWER:

21 Q. And by vendor, you referred to
22 the vendor a couple of times, do you mean
23 manufacturer?

24 A. Manufacturer, supplier.

25 Q. What's the difference in your

1 mind between manufacturer and supplier?

2 A. Not everyone we purchased from
3 actually manufactured their products.

4 Q. Okay. And who did you purchase
5 from that did not manufacture products?

6 A. There's some companies that
7 have contract manufacturers, and I'm not
8 familiar with who has that and who does not
9 have that.

10 Q. Can you explain what you mean
11 by contract manufacturers?

12 A. The company would have a
13 different company that -- a company would
14 manufacture the item. They would use a sales
15 force to then work with us to purchase the
16 item.

17 Q. And that is different than a
18 manufacturer providing an item in somehow --
19 in some way?

20 A. In my mind, that is different.
21 A manufacturer -- if I called them a
22 manufacturer, they actually manufactured the
23 product themselves, and then they owned the
24 account managers that called on us. There's
25 some companies that manufacture and sell to

1 different companies. Teva, for example,
2 could manufacture their own product or they
3 could buy a product that was manufactured
4 from another company.

5 Q. Okay.

6 A. We do use the terms
7 interchangeably.

8 Q. Okay. Just adds some more
9 confusion to it.

10 A. Sorry.

11 Q. No, that's fine. I just want
12 to make sure we're all on the same page.

13 Does this distinction in your
14 mind apply to any prescription opiate
15 products that you purchased?

16 MS. FUMERTON: Objection, form.

17 A. Not that I'm aware of.

18 BY MR. BOWER:

19 Q. So based on your experience,
20 Walmart purchased opioid products from the
21 manufacturer; is that correct?

22 A. I'm just trying to think of
23 each -- yes.

24 Q. All right. I mean, you were
25 the person at Walmart responsible for the

1 purchasing, right?

2 MS. FUMERTON: Objection, form.

3 A. I was responsible for my
4 categories, yes.

5 BY MR. BOWER:

6 Q. Including -- which included the
7 pain category, right?

8 A. That is accurate, yes.

9 Q. Which included prescription
10 opiates, right?

11 A. Yes, it did.

12 Q. Is there anyone at Walmart more
13 knowledgeable than you about purchasing these
14 products from 2011 to 2014?

15 MS. FUMERTON: Objection, form.

16 A. I don't think so.

17 BY MR. BOWER:

18 Q. You're the person, right?

19 MS. FUMERTON: Objection, form.

20 A. Yes.

21 BY MR. BOWER:

22 Q. Okay. So let me ask you again.

23 Did Walmart ever purchase any
24 prescription opiates from companies that did
25 not manufacture them?

1 MS. FUMERTON: Objection, form.

2 BY MR. BOWER:

3 Q. During -- strike that.

4 From 2011 to 2014, did Walmart
5 purchase prescription opiates from companies
6 that did not manufacture them?

7 A. I cannot be a hundred percent
8 sure.

9 Q. I'm not asking for -- I'm
10 asking for based on your experience, are you
11 aware of any?

12 MS. FUMERTON: Objection, form.

13 A. I'm not aware. I don't -- I
14 would have to -- I would have to look back at
15 a record and ask each manufacturer, did you
16 manufacture this or did you purchase this
17 from a contract manufacturer. I just don't
18 have that information in my mind.

19 BY MR. BOWER:

20 Q. Okay. Well, let's look at this
21 Exhibit 2 then and maybe that can help us
22 move a little bit, okay.

23 If you look at the paragraph
24 after the [REDACTED] rebate, do you see that,
25 pricing for indirect purchases?

1 Do you see that?

2 A. Yes.

3 Q. Are you familiar with what
4 indirect purchases refers to?

5 A. Yes.

6 Q. What does that refer to?

7 A. Indirect purchases are if
8 stores have to purchase an item from McKesson
9 instead of through our warehouse.

10 Q. And during this time stores had
11 that capability, correct?

12 MS. FUMERTON: Objection, form.

13 MR. BOWER: What's the nature
14 of that objection?

15 MS. FUMERTON: Because it's
16 ambiguous as to what capability you're
17 talking about, and with respect to
18 McKesson, if you're talking about who
19 the original source is or whether it
20 still had to go through, for example,
21 a DC, then be routed to McKesson.

22 MR. BOWER: Sorry, that wasn't
23 my question.

24 Could you read back the
25 question, please?

1 MS. FUMERTON: Well, I was
2 explaining my objection. I'm not
3 saying that was your question.

4 MR. BOWER: That's fine. Your
5 objection is unrelated to my question,
6 so can you please read back --

7 MS. FUMERTON: No, it isn't.
8 I'm objecting to the form of your
9 question because it's vague as to how
10 you're asking the question.

11 MR. BOWER: Okay.

12 (The following portion of the
13 record was read.)

14 "QUESTION: And during this
15 time stores had that capability,
16 correct?"

17 (End of readback.)

18 A. I was not employed at Walmart
19 during this time. I'm not sure if they had
20 those capabilities at that time.

21 BY MR. BOWER:

22 Q. What about the time when you
23 were employed at Walmart, did they have those
24 capabilities to purchase directly from
25 McKesson?

1 A. Stores could purchase directly
2 from McKesson; on regular items that were not
3 C-II items, they could purchase from
4 McKesson. On C-II items, those orders had to
5 be placed through our DC. If the DC was out
6 of product, then that order would be routed
7 to McKesson.

8 Q. What does that mean, if the DC
9 was out of product the order would be routed
10 to McKesson?

11 A. If there was no product in the
12 Walmart distribution center to fulfill that
13 order, then somehow that order then got
14 routed to McKesson to fulfill that order for
15 the store.

16 Q. Then McKesson would fill that
17 product, correct?

18 A. If they had the product.

19 Q. And they would distribute that
20 product to -- directly to the pharmacy,
21 correct?

22 A. They would ship directly to the
23 Walmart pharmacies, yes.

24 Q. From McKesson directly to
25 Walmart pharmacies, right?

1 MS. FUMERTON: Objection, form.

2 A. Yes.

3 BY MR. BOWER:

4 Q. No ambiguity about that, right?

5 MS. FUMERTON: Objection, form.

6 MR. BOWER: I'll rephrase.

7 BY MR. BOWER:

8 Q. There's no question in your
9 mind that that's what happened, right, that
10 if the DC was out of a Schedule II opioid,
11 that the pharmacy could get the product
12 directly from McKesson, right?

13 MS. FUMERTON: Objection, form.

14 A. The store would have to place
15 the order through the Walmart ordering
16 system. If Walmart was out of stock, the
17 order would then go to McKesson and would be
18 filled if McKesson had that item.

19 BY MR. BOWER:

20 Q. And let me break that down a
21 little bit.

22 How do you know that the store
23 would have to place the order through the
24 Walmart ordering system? What's the basis
25 for that knowledge?

1 A. We had to have a Walmart item
2 number created for those items before the
3 stores could place an order for any C-II
4 items, so if the stores ordered from
5 McKesson, they could just order an NDC, a
6 specific SKU from McKesson.

7 Q. And the stores could do that,
8 right? You said if the stores ordered from
9 McKesson they could just order an NDC.

10 MS. FUMERTON: Objection, form.

11 A. That was not for controlled --
12 for C-II items.

13 BY MR. BOWER:

14 Q. Okay. How do you know that?

15 A. Stores would need to ask us to
16 create those items. If there was an item
17 that they needed that was not something that
18 we warehoused, then we would have to look at
19 that item and make decisions on that item.

20 Q. And all I'm trying to
21 understand is: Where did you acquire that
22 knowledge? Was there some written policy in
23 place that provided for that procedure?

24 A. That was communicated to me.

25 Q. And who communicated that to

1 you?

2 A. I can't remember at the time.

3 Q. Well, who were the folks that
4 could have communicated that to you?

5 A. It could have been anyone that
6 was in our department. It could have been --
7 it would have had to have been someone in our
8 department. That was a conversation that we
9 would have had.

10 Q. And this was -- you recall this
11 conversation occurring in 2008?

12 A. I don't recall the exact
13 communication, no.

14 Q. Well, do you recall when this
15 policy was in place?

16 A. I do not know when the policy
17 was put into place, no.

18 Q. It could have been a new policy
19 in 2011, for example, correct?

20 MS. FUMERTON: Objection, form.

21 A. For the time period that I
22 purchased opioids, if the store was going to
23 purchase an item from McKesson, they had to
24 place the order through our -- our ordering
25 system. If the distribution center was out

1 of product, then that order would be sent to
2 McKesson.

3 BY MR. BOWER:

4 Q. I understand that's what you
5 want to tell us today, but I'm asking you:
6 How do you know that was, in fact, occurring
7 in 2008?

8 MS. FUMERTON: Objection, form.

9 A. That was always my
10 understanding during the time that I had this
11 category.

12 BY MR. BOWER:

13 Q. So let's go back then to 2.
14 You explained to me how that worked then,
15 right? You have reference to indirect
16 purchase here.

17 Do you see that?

18 A. On this paragraph 2?

19 Q. Yes.

20 A. Yes.

21 Q. So what is an indirect purchase
22 then?

23 A. An indirect purchase is an item
24 that was purchased from McKesson that we also
25 warehouse in our warehouse.

1 Q. So why would a purchase occur
2 from McKesson if it's also warehoused?

3 A. With nonopioids -- I'm sorry.

4 Q. Go ahead and finish. I don't
5 want to cut you off.

6 A. Okay. With nonopioids, a store
7 may need a product quicker. They may be in a
8 two-day area from our distribution center;
9 they may need it in one day. With an opioid
10 it would only be if the product was out of
11 stock in our C-II warehouse. That's a pretty
12 standard term on all item-specific contracts
13 from manufacturers, whether it's an opioid or
14 a nonopioid.

15 Q. So is it your testimony that
16 this -- these terms distinguishing indirect
17 purchases versus direct purchase did not
18 apply to the opioid products reflected on
19 Exhibit 2?

20 MS. FUMERTON: Objection, form.

21 A. Could you restate that?

22 BY MR. BOWER:

23 Q. Sure.

24 Exhibit 2 only refers to opioid
25 products, correct?

1 A. That is correct.

2 Q. Okay. Does the pricing
3 provisions reflecting different pricing for
4 indirect purchases versus direct purchases
5 include these prescription opiates?

6 A. Yes, these contract prices on
7 this sheet reflect the prices for
8 prescription opioids.

9 Q. In fact, Walmart's purchasing
10 records would indicate whether indirect
11 purchasing occurred, correct?

12 MS. FUMERTON: Objection, form.

13 MR. BOWER: I'll strike that.

14 BY MR. BOWER:

15 Q. Would Walmart's purchasing
16 records indicate whether, for example, the
17 first product here, hydrocodone bitartrate,
18 was ever purchased indirectly?

19 A. By Walmart's purchasing record,
20 I'm not sure I understand what you mean by
21 Walmart's purchasing record.

22 Q. Does Walmart have purchasing
23 records?

24 MS. FUMERTON: Objection, form.

25 MR. BOWER: I'll strike that.

1 BY MR. BOWER:

2 Q. What records are available, if
3 any, that would reflect purchases made by
4 Walmart pharmacies of hydrocodone bitartrate?

5 MS. FUMERTON: Objection, form.

6 A. We would have the purchase
7 orders that we placed for those items. The
8 manufacturer would understand what the total
9 volume purchased was, and then there are
10 McKesson invoices that Walmart would have
11 gotten from purchases that were purchased
12 from Walmart.

13 BY MR. BOWER:

14 Q. So in other words, Walmart does
15 have records reflecting whether McKesson ever
16 provided these products to Walmart, correct?

17 A. Correct.

18 Q. Okay.

19 (Walmart-Little Exhibit 3
20 marked.)

21 BY MR. BOWER:

22 Q. You've been handed what's been
23 marked as Exhibit 3 to today's deposition.
24 It's just two one-page contracts, I believe,
25 both reflecting your signature.

1 Do you see that?

2 A. Yes.

3 Q. Just take a moment to review
4 those documents. I have a few questions on
5 them.

6 MR. CIULLO: Can you read the
7 Bates number, please.

8 MR. BOWER: Sure. I was just
9 about to do that. The Bates number
10 for this is PAR_OPIOID_MDL_0000400255
11 and 256.

12 BY MR. BOWER:

13 Q. Have you had a chance to review
14 those documents, ma'am?

15 A. Yes, I have.

16 Q. Is that your signature on those
17 documents?

18 A. Yes, it is.

19 Q. And you signed those documents
20 on behalf of Walmart, correct?

21 A. That is correct.

22 Q. And these documents reflect
23 purchases of opioid products from Purdue,
24 correct?

25 MS. FUMERTON: Objection, form.

1 A. That's not correct. These were
2 to QualiTest, and these were estimates of
3 usage in request for pricing and product.

4 BY MR. BOWER:

5 Q. Okay. Thank you for that
6 clarification.

7 What do you mean by estimates
8 of usage?

9 A. If I was looking for supply, if
10 I was out of stock and had an issue in the
11 market, I would need to provide utilization
12 that I estimated that we would purchase to be
13 able to purchase those products to give them
14 an idea of what those volumes could be in the
15 future.

16 Q. And how did you at this point
17 in time, 2009, how would you have determined
18 what those volumes would be?

19 A. I would look at past purchases,
20 and then I would put an estimate in there for
21 any real estate or whatever we had in place
22 on our budget for purchases.

23 Q. Can you explain what you mean
24 by real estate?

25 A. Well, we had increases in

1 utilization from additional stores opening,
2 things like that.

3 Q. Did you have increases in
4 demand over time?

5 MS. FUMERTON: Objection, form.

6 A. Yes, we would have increase in
7 demand.

8 BY MR. BOWER:

9 Q. And that would be something you
10 would factor into the quality estimation,
11 correct?

12 MS. FUMERTON: Objection, form.

13 A. The estimate to QualiTest, yes.

14 BY MR. BOWER:

15 Q. Sorry, the quantity -- I
16 misspoke. The annual quantity estimation you
17 provided here, that would have included
18 increases in expected demand, correct?

19 MS. FUMERTON: Objection, form.

20 A. Yes, that's correct.

21 BY MR. BOWER:

22 Q. Okay. Where would you have
23 gotten these numbers from?

24 A. The past utilization?

25 Q. Well, let me strike that.

1 The number reflected here,
2 right, is 1.2 million annual quantity for
3 hydrocodone/APAP 10/325mg 100s, correct?

4 A. Correct.

5 Q. So that's bottles of 100,
6 right?

7 MS. FUMERTON: Objection, form.

8 A. That is correct.

9 BY MR. BOWER:

10 Q. So Walmart's estimated annual
11 quantity needs for bottles of 100 was
12 1.2 million in 2009, correct?

13 MS. FUMERTON: Objection, form.

14 A. That -- that is correct.

15 BY MR. BOWER:

16 Q. Where would that
17 number 1.2 million have come from? Strike
18 that.

19 Would that number have been a
20 calculation that you yourself made or would
21 someone else at Walmart have made that
22 calculation?

23 A. It would be a random estimate
24 that I would make just based off of past
25 supply and then what I thought increases

1 could be in the future. And I generally
2 would overestimate those numbers.

3 Q. And you would overestimate to
4 ensure that Walmart got supply it needed,
5 right?

6 A. I would overestimate for any
7 drug that I gave utilization on because I
8 wasn't familiar with stores that we would add
9 or different things that were going on in the
10 business. Yes.

11 Q. And you wanted to overestimate
12 to make sure Walmart had available supply,
13 right?

14 A. My job was to make sure we had
15 supply for the stores, yes.

16 Q. So you testified your
17 estimate's based on past supply and increases
18 in the future, right? So let's break those
19 down a little bit.

20 How would you have determined
21 what the past supply was?

22 MS. FUMERTON: Objection, form.

23 A. We would have reports that
24 would give us what past -- what past script
25 numbers were.

1 BY MR. BOWER:

2 Q. Would those -- strike that.

3 Who would provide those reports
4 to you?

5 A. Our planning department or --
6 mostly the planning departments.

7 Q. And who from the planning
8 departments would have provided reports with
9 respect to prescription opiates during this
10 time period?

11 A. The reports would have included
12 all drugs at the time, not just specific to
13 opioids.

14 Q. Okay. So thank you for that
15 clarification.

16 Who would have provided those
17 reports during this time period?

18 A. It would have been people,
19 whoever worked in those departments. I can't
20 remember specific people who would have given
21 me that.

22 Q. Okay. Would you have requested
23 those reports or were they provided to you
24 periodically?

25 MS. FUMERTON: Objection, form.

1 A. We received monthly reports of
2 script usage.

3 BY MR. BOWER:

4 Q. What information was on those
5 reports to the best of your recollection?

6 A. Drugs, NDCs, pack size, GPI
7 number, script count for the current month,
8 utilization for past months.

9 Q. What format were those reports
10 provided in, if you can recall? Were they
11 Excels, PowerPoints, PDFs?

12 A. They were in Excel format.

13 Q. Who received those reports on
14 the purchasing side of things?

15 MS. FUMERTON: Objection, form.

16 A. I know I did. The buyers, I'm
17 assuming.

18 BY MR. BOWER:

19 Q. And you consider yourself a
20 buyer; is that correct?

21 A. That's accurate.

22 Q. And so the other criteria you
23 mentioned that went into the 1.2 million
24 estimation was increases in demand, correct?

25 A. I don't know if I -- if we

1 looked at demand. I would look at past
2 utilization and I would just ballpark a
3 number, and I would add additional units to
4 it. I don't know that -- I know that I did
5 not have a set algorithm or formula that I
6 would use. I just would -- I really just
7 would ballpark a number.

8 Q. Well, other than past demand,
9 would you consider anything else?

10 MS. FUMERTON: Objection, form.

11 A. Not necessarily when I came up
12 with the numbers, no.

13 BY MR. BOWER:

14 Q. Okay. So based on your
15 recollection, this annual quality
16 number here, 1.2 million, would have been
17 based solely on Walmart's purchases for the
18 prior year?

19 A. No, I would have estimated up
20 on that number. I would have rounded up.

21 Q. And why would you have done
22 that?

23 A. Because I knew that our
24 business increased year over year based off
25 of new locations, based off of new business,

1 based off of multiple things.

2 Q. Well, but this is an estimation
3 for one product, right?

4 A. This is an estimation for this
5 one NDC, yes.

6 Q. So how would new businesses
7 increase -- or affect your estimation here?

8 MS. FUMERTON: Objection, form.
9 BY MR. BOWER:

10 Q. Can you just explain what you
11 mean by that?

12 A. New customers coming into
13 Walmart to purchase items.

14 Q. So this number, this estimation
15 reflects Walmart's potential growth for the
16 hydrocodone business, correct?

17 MS. FUMERTON: Objection, form.

18 A. This number is an estimate that
19 I just put together based off of past usage
20 and knowing that our business increased. I
21 didn't have a formula that I put into place
22 with set numbers of a 6% growth or anything
23 like that.

24 BY MR. BOWER:

25 Q. But you did have an expectation

1 that business would increase, correct?

2 MS. FUMERTON: Objection, form.

3 A. I had an expectation year over
4 year that our pharmacy business would
5 increase, yes.

6 BY MR. BOWER:

7 Q. And that was based on past
8 increases, correct?

9 MS. FUMERTON: Objection, form.

10 A. Somewhat. Yes.

11 BY MR. BOWER:

12 Q. This letter is from you to
13 Charles Propst, correct?

14 A. That's correct.

15 Q. Did you ever have any meetings
16 with Mr. Propst?

17 A. I have met with him, yes.

18 Q. When did you meet with him?

19 A. I would have met with him at
20 NACDS or ECRM. I don't remember if he came
21 to our office for meetings or not.

22 Q. In fact, you frequently went to
23 NACDS meetings, correct?

24 MS. FUMERTON: Objection, form.

25 A. I went to NACDS once a year.

1 BY MR. BOWER:

2 Q. Once a year.

3 And at those meetings, you met
4 with manufacturers, correct?

5 A. That is correct.

6 Q. That was the purpose of you
7 attending those meetings, correct?

8 MS. FUMERTON: Objection, form.

9 A. That is correct.

10 BY MR. BOWER:

11 Q. Other than meeting with
12 manufacturers, was there any other reason
13 that you would attend NACDS meetings?

14 A. They would have some industry
15 information that -- a Doug Long presentation
16 or some other educational classes or things
17 like that.

18 Q. At any of these NACDS meetings,
19 did you ever attend any presentations or
20 discussions regarding the opioid epidemic?

21 MS. FUMERTON: Objection, form.

22 A. Not that I'm aware of.

23 BY MR. BOWER:

24 Q. Do you recall any such
25 presentations or discussions occurring?

1 MS. FUMERTON: Objection, form.

2 A. Not that I'm aware of.

3 BY MR. BOWER:

4 Q. What do you mean -- can you be
5 more specific when you say not that I'm aware
6 of? Do you recall it happening or not?

7 A. There were --

8 MS. FUMERTON: Objection, form.

9 A. There were multiple meetings
10 every year. There were, I don't know, six or
11 eight that you could choose from to go. I'm
12 not sure that over ten years that I remember
13 all of the classes that they offered at --

14 BY MR. BOWER:

15 Q. And I'm asking you today as you
16 sit here under oath: Do you recall there
17 ever being a presentation or discussion on
18 the opiate epidemic at any NACDS meeting?

19 MS. FUMERTON: Objection, form
20 and asked and answered.

21 THE WITNESS: I'm sorry, what
22 was the second part of what you said?

23 MS. FUMERTON: You still need
24 to answer the question if you
25 understood it.

1 A. I don't recall.

2 BY MR. BOWER:

3 Q. In other words, there may have
4 been one; you just don't recall?

5 A. That's correct.

6 Q. There may have been several;
7 you just don't recall?

8 MS. FUMERTON: Objection, form.

9 A. That is correct.

10 BY MR. BOWER:

11 Q. Going back to the -- looking
12 into this 1.2 million number here, the growth
13 factor that you included in here, would that
14 be based on your prior experience at Walmart?

15 MS. FUMERTON: Objection, form.

16 A. It really would just be a
17 random rounding up of a number. I -- I did
18 not put any thought or basis into how I
19 rounded up that number.

20 BY MR. BOWER:

21 Q. Well, here you write to
22 Mister -- and the spelling is P-R-O-P-S-T --
23 that due to the past continued market
24 shortages we're currently unable to
25 adequately fill our customers' orders.

1 Do you see that?

2 A. Yes.

3 Q. Where would you have received
4 that information?

5 A. So we received out-of-stock
6 reports in the morning that would tell us if
7 our DCs were out of product. We would also
8 meet with our replenishment team and they
9 would update us on those situations.

10 Q. So on or about May 2009,
11 Walmart could not adequately fill its
12 prescription orders for this product,
13 correct?

14 A. That is correct, but it could
15 be due to manufacturers not shipping because
16 they did not have product or was there
17 another issue.

18 Q. But either way, you couldn't
19 fill the orders, right?

20 MS. FUMERTON: Objection, form.

21 A. We were out of stock in the
22 warehouse.

23 BY MR. BOWER:

24 Q. Right, the demand was larger
25 than the supply, right?

1 MS. FUMERTON: Objection, form.

2 A. Well, that's not necessarily
3 true. It could be that our manufacturers
4 were not shipping for some reason.

5 BY MR. BOWER:

6 Q. That would be the supply,
7 right?

8 MS. FUMERTON: Objection, form.

9 A. For some reason our supply was
10 not in the distribution center.

11 BY MR. BOWER:

12 Q. Right.

13 Do you recall whether the
14 supply wasn't in the distribution center
15 because Walmart had filled its quotas from
16 other manufacturers?

17 MS. FUMERTON: Objection, form.

18 A. I don't recall.

19 BY MR. BOWER:

20 Q. It could have happened, right?

21 MS. FUMERTON: Objection, form.

22 BY MR. BOWER:

23 Q. Well, when you say you don't
24 recall, that means it could have happened,
25 you just remember, right?

1 MS. FUMERTON: Objection, form.

2 BY MR. BOWER:

3 Q. Strike that.

4 What do you mean when you say I
5 don't recall?

6 A. I don't recall if it was a
7 market shortage, if multiple manufacturers
8 were out of product or if it was any other
9 reason.

10 Q. What would another reason be
11 based on your experience as the person
12 responsible for buying these products for
13 Walmart?

14 MS. FUMERTON: Objection, form.

15 A. What I recall is that
16 manufacturers were having trouble producing
17 enough product.

18 BY MR. BOWER:

19 Q. Because the demand was
20 increasing, right?

21 MS. FUMERTON: Objection, form.

22 A. I don't recall what the -- what
23 the demand increases were on these products
24 specifically.

25 BY MR. BOWER:

1 Q. Well, it could have been then
2 because the demand was increasing, right,
3 because you don't recall?

4 MS. FUMERTON: Objection, form.

5 A. It could have been.

6 BY MR. BOWER:

7 Q. Because Walmart didn't
8 adequately forecast next year's demand the
9 prior year, right? It didn't have enough
10 product?

11 MS. FUMERTON: Objection, form.

12 A. When we forecasted, we didn't
13 forecast at an individual SKU level. We
14 forecasted at an overall pharmacy department
15 number. We didn't go down to category or to
16 individual item numbers when we would put
17 together our department budgets for the year.

18 BY MR. BOWER:

19 Q. I'm asking about Exhibit 3. Is
20 this a forecast in your mind?

21 MS. FUMERTON: Objection, form.

22 A. This is a forecast.

23 BY MR. BOWER:

24 Q. Is this on the individual SKU
25 level?

1 MS. FUMERTON: Objection, form.

2 A. This is an estimated forecast.

3 This was a number that I rounded up. I

4 don't --

5 MR. BOWER: Move to strike that

6 answer. Could you just please read

7 back my question.

8 (The following portion of the

9 record was read.)

10 "QUESTION: Is this on the

11 individual SKU level?"

12 (End of readback.)

13 MS. FUMERTON: Objection, form.

14 A. Yes, this is an individual SKU

15 level.

16 BY MR. BOWER:

17 Q. So as reflected in Exhibit 3,

18 you're providing an estimated usage for this

19 product to this manufacturer, correct?

20 A. That is correct.

21 Q. Okay. And you're doing so

22 because you cannot fill the current need,

23 correct?

24 MS. FUMERTON: Objection, form.

25 A. I'm doing so because our

1 warehouses were out of product, and I was
2 trying to secure additional product for our
3 warehouses.

4 BY MR. BOWER:

5 Q. Well, you state the reason
6 here, don't you? You say you were unable to
7 adequately fill our customer's prescription
8 orders, right?

9 A. Correct.

10 Q. That's why you needed more
11 product, right?

12 MS. FUMERTON: Objection, form.

13 A. That's correct.

14 BY MR. BOWER:

15 Q. And you asked QualiTest to take
16 whatever steps needed to ramp up production
17 for immediate supply, right?

18 A. Correct.

19 Q. And then going to page 2 of
20 this exhibit, another letter to Mr. Propst,
21 same spelling, same day, right, May 9th,
22 2009?

23 A. May 6th, yes.

24 Q. I'm sorry, May 6th, 2009. I
25 apologize for that.

1 Now you're writing about
2 oxycodone, correct?

3 A. That is correct.

4 Q. Okay. And your annual quantity
5 for these is 228,000, correct?

6 MS. FUMERTON: Objection, form.

7 A. That is correct.

8 BY MR. BOWER:

9 Q. Other than the factors we've
10 discussed, any other factors that would have
11 gone into providing this annual quality --
12 quantity -- apologize, to QualiTest?

13 MS. FUMERTON: Objection, form.

14 A. I'm sorry, could you repeat
15 that?

16 BY MR. BOWER:

17 Q. Sure. I'm just trying to
18 figure out whether this annual quantity
19 number was derived at in the same way as the
20 other quantity number.

21 A. That would be correct.

22 Q. Okay. Thank you.

23 And here you again write: Due
24 to the past continued market shortages.
25 Correct?

1 A. Yes.

2 Q. So at this point in time,
3 Walmart was experiencing market shortages for
4 oxycodone, right?

5 MS. FUMERTON: Objection, form.

6 A. Walmart was experiencing
7 shortages in their distribution center.

8 BY MR. BOWER:

9 Q. For oxycodone, correct?

10 A. That is correct.

11 Q. And just like for hydrocodone,
12 Walmart could not adequately fill its
13 customers' prescription orders for oxycodone,
14 right?

15 A. That is correct. If the store
16 does not have the product, we can't fill the
17 prescriptions.

18 Q. And you wanted QualiTest to
19 take whatever steps needed to ramp up
20 production for immediate supply of oxycodone,
21 right?

22 MS. FUMERTON: Objection, form.

23 A. Correct.

24 BY MR. BOWER:

25 Q. Were you aware whether the

1 country was in the middle of an opioid
2 epidemic in 2009?

3 MS. FUMERTON: Objection, form.

4 A. In 2009 I was not aware.

5 BY MR. BOWER:

6 Q. Do you know whether the country
7 was enduring an epidemic in 2009?

8 MS. FUMERTON: Objection, form.

9 A. I do not know.

10 BY MR. BOWER:

11 Q. Do you know whether people were
12 dying from oxycodone overdoses in 2009?

13 MS. FUMERTON: Objection, form.

14 A. From my past history of working
15 in the emergency room, I knew that people
16 died of overdoses from drugs, yes.

17 BY MR. BOWER:

18 Q. And you knew specifically that
19 they died of overdoses of oxycodone, right?

20 MS. FUMERTON: Objection, form.

21 A. I've seen overdoses of
22 different drugs, oxycodone included, but
23 other drugs as well.

24 BY MR. BOWER:

25 Q. Did you have any concerns about

1 the increase in prescription orders during
2 this time period for oxycodone?

3 MS. FUMERTON: Objection, form,
4 lacks foundation.

5 A. I did not have any concern, no.

6 BY MR. BOWER:

7 Q. Why not?

8 A. I can't recall.

9 Q. Okay.

10 (Walmart-Little Exhibit 4
11 marked.)

12 MR. BOWER: This is 4, I
13 believe.

14 BY MR. BOWER:

15 Q. You've been handed what's been
16 marked as Exhibit 4. It's an e-mail from
17 Mr. Steve Cohen to yourself dated
18 September 3rd, 2009 regarding Walmart
19 oxycodone, and the Bates number is ACTAVIS,
20 A-C-T-A-V-I-S, and then 0639662.

21 MS. FUMERTON: You can take a
22 minute to review the document.

23 So Zach, it looks like there's
24 a page missing based on the sequence
25 of the Bates numbers.

1 MR. CIULLO: Looks like there's
2 a page missing also -- looks like this
3 was produced in the Chicago litigation
4 from Actavis. It doesn't have the
5 confidential stamp at the bottom.
6 There are subsequent productions
7 from -- under the Allergan MDL Bates
8 numbers that do have that.

9 MR. BOWER: Okay.

10 MR. CIULLO: So this should be
11 treated as a confidential document.

12 MR. BOWER: Okay. That's fine.
13 She's on this e-mail.

14 MR. CIULLO: Of course.

15 MR. BOWER: That's fine. We'll
16 certainly treat this as confidential.

17 MR. CIULLO: Of course, thank
18 you so much.

19 MS. FUMERTON: But I'm going to
20 object to the use of the document as
21 being incomplete since it's missing a
22 page number based on the Bates
23 numbers.

24 MR. BOWER: That's fine, we can
25 just look at the e-mail. If you want

1 to object to that, you can pull out 65
2 and 66 if you want. If you're going
3 to make that objection --

4 MS. FUMERTON: Yeah, I am
5 making that objection.

6 MR. BOWER: -- and you're going
7 to represent that you don't believe
8 this is an accurate document, then we
9 can remove it.

10 MS. FUMERTON: Well, it's
11 missing a page is what I'm making a
12 representation of. I don't have
13 personal knowledge of whether or not
14 this is an accurate document or not.

15 MR. BOWER: Okay. Well, do you
16 see the attachment? It reflects
17 Walmart oxycodone 9209, and you see
18 the date of the attachment --

19 MS. FUMERTON: Yes, Zach, I do.
20 Do you see the Bates number?

21 MR. BOWER: I do.

22 MS. FUMERTON: Do you see it
23 goes to 662 then 663 --

24 MR. BOWER: I do. And maybe
25 that page --

1 MS. FUMERTON: -- and then it
2 misses a page and then has 665.

3 MR. BOWER: Maybe that cover
4 page is missing --

5 (Simultaneous discussion
6 interrupted by the reporter.)

7 MR. BOWER: But like I said, if
8 you want to make that -- if you want
9 to make that an issue, we can remove
10 it from the record. That's fine.

11 MS. FUMERTON: Okay.

12 MR. BOWER: So if you want to
13 just pull out the last two pages of
14 that.

15 I understand your concern about
16 the marketing fee, but we'll see a
17 contract that she signs later that
18 includes a marketing fee so --

19 MS. FUMERTON: Well, Zach --

20 MR. BOWER: -- I can absolve
21 you of those concerns right now.

22 MS. FUMERTON: First of all,
23 you completely misrepresented what I
24 said. Second of all, I'm going to
25 object -- it's your exhibit. I'm

1 going to object to the exhibit's use
2 since it's incomplete. Removing these
3 two pages also makes it incomplete.
4 It is just an incomplete document.

5 If you have the entire
6 document, I would appreciate that you
7 use it with the witness so that we can
8 be as accurate as possible and not --

9 MR. BOWER: Okay. So we will
10 use the e-mail that the witness
11 received.

12 MS. FUMERTON: And then the
13 e-mail is now incomplete.

14 MR. BOWER: We're allowed to
15 use e-mails. We're allowed to use
16 e-mails without attachments. Are you
17 saying we're not allowed to use an
18 e-mail without an attachment?

19 MS. FUMERTON: I'm saying that
20 you're going to have to represent that
21 the document is incomplete. If you
22 want to say that I am using an e-mail
23 that is incomplete with the witness,
24 that's fine. That's your prerogative.

25 MR. BOWER: I'm not saying

1 that. I'm saying you can remove the
2 last two pages, and let me do that so
3 the record is -- you just hand me that
4 back, I'll review.

5 So based upon your counsel's
6 objection, we'll remove the last two
7 pages of this document so that it's
8 not in the record yet.

9 MS. FUMERTON: Well, I'm
10 objecting then to the use of the
11 e-mail without the correct attachment.

12 MR. BOWER: You can object to
13 that but I don't believe there's
14 anything preventing us from using an
15 e-mail the witness received.

16 MS. FUMERTON: Yeah --

17 MR. BOWER: You can note your
18 objection for the record.

19 MS. FUMERTON: If you want to
20 make the record, I just want the
21 record to be clear that you are
22 handing the witness a document with an
23 e-mail that apparently had an
24 attachment. You didn't bring the
25 correct attachments or you brought it

1 in a way that appears based on it to
2 be incomplete, and that's my
3 objection.

4 MR. BOWER: What do you think
5 is incomplete about the e-mail?

6 MS. FUMERTON: Because there is
7 another page that's apparently missing
8 based on the Bates numbers. You are a
9 lawyer. You understand how Bates
10 numbers work.

11 MR. BOWER: Yes.

12 MS. FUMERTON: There's a
13 missing Bates number.

14 MR. BOWER: Sorry. So just for
15 the record so we're all clear. The
16 first page of this exhibit ends in 62.
17 The second page of this exhibit ends
18 in 63. Okay? That's the exhibit.
19 It's two pages.

20 MS. FUMERTON: And I will
21 object to this exhibit because there
22 is apparently a PDF that was attached
23 to this exhibit that you are not
24 including and showing to the witness.

25 MR. BOWER: I don't think that

1 that's accurate. If you want to
2 produce something, some factual basis
3 for your statement, that's fine. I
4 will say that this e-mail appears to
5 be a complete e-mail. If you notice,
6 the end of it has the confidentiality
7 signature that everyone has these
8 days. I don't think there's anything
9 incomplete about this e-mail.

10 If you have a basis to tell us
11 today that you think this is
12 incomplete, please do so. But with
13 that, I think we can move forward.

14 MS. FUMERTON: No. I'm going
15 to state again to be clear since you
16 keep talking over me, I'm objecting to
17 this exhibit because as you pointed
18 out earlier, it says at the top that
19 there's a PDF that's attached. You
20 presented a document with a missing
21 Bates number. I don't know why it was
22 missing. Somehow it's missing, which
23 gives me pause as to whether or not
24 this is a complete document.

25 So now you've removed the last

1 two pages. It's still an incomplete
2 document. You can proceed how you
3 wish and I'm objecting to the use of
4 this document.

5 MR. BOWER: Okay. I understand
6 your concern about what the attachment
7 says and that you've represented there
8 were no marketing fees, but we'll see
9 that document later again and we'll
10 proceed.

11 MS. FUMERTON: Apparently you
12 do not understand because you keep
13 misrepresenting what I said.

14 MR. BOWER: Okay.

15 MS. FUMERTON: I did not say I
16 had a concern about the document. I
17 had a concern this exhibit is
18 incomplete.

19 MR. BOWER: And I understand
20 you have concerns about the exhibit,
21 you don't want it in the record, but I
22 can tell you that she signed that
23 agreement, it will come into the
24 record, so we can please move on.

25 MS. FUMERTON: Still, you keep

1 misrepresenting what I said. So if
2 you would like to move on, please do
3 not represent what I said because it's
4 not what I said.

5 MR. BOWER: Are you ready to
6 proceed?

7 THE WITNESS: Yes.

8 BY MR. BOWER:

9 Q. This is -- who is Mr. Cohen?

10 A. He was a national account
11 manager with Actavis.

12 Q. Okay. Prior to receiving this
13 e-mail, had you had interactions with
14 Mr. Cohen?

15 A. I think I -- I believe I had.

16 Q. You had been purchasing
17 products from him, correct, during this time
18 period --

19 A. Correct.

20 Q. -- prior to this?

21 MS. FUMERTON: Objection, form.

22 MR. BOWER: I'll rephrase.

23 BY MR. BOWER:

24 Q. Prior to receiving this e-mail,
25 Walmart was purchasing prescription opiates

1 from Actavis, correct?

2 A. That, I --

3 MR. CIULLO: Object to form.

4 A. -- I'm not clear about that. I
5 know we had a relationship with Actavis and
6 we purchased many prescription products from
7 Actavis, yes.

8 BY MR. BOWER:

9 Q. You just don't recall while you
10 sit here today whether you had already begun
11 purchasing prescription opiates as of this
12 date, correct?

13 A. That's accurate, yes.

14 Q. And who is Mister -- if you see
15 the first e-mail there in the chain on the
16 bottom, Mr. Miranda. Do you see that?

17 A. Yes, I see that.

18 Q. Who is Mr. Miranda, if you
19 recall?

20 A. He is the -- I believe was the
21 contract person -- the contracting -- senior
22 contract manager key accounts for Actavis.

23 Q. Okay. Did you have any
24 communications with him or Mr. Cohen prior to
25 receiving this offer?

1 A. I can't recall.

2 Q. Okay. Do you see he notes that
3 this is a business proposal for oxycodone,
4 15mg and 30mg.

5 Do you see that?

6 MS. FUMERTON: Objection, form.
7 Again, I'm objecting to this exhibit
8 because you're referring to a business
9 proposal that's not attached.

10 MR. BOWER: Your objection is
11 noted --

12 MS. FUMERTON: You can't ask --
13 (Simultaneous discussion
14 interrupted by the reporter.)

15 MR. BOWER: Your objection is
16 noted. We need to move on. Okay.

17 MS. FUMERTON: But it is
18 fundamentally unfair and misleading to
19 a witness to ask them about a business
20 proposal that is not attached. You
21 keep asking questions about --

22 MR. BOWER: I didn't ask about
23 the proposal. I asked --

24 MS. FUMERTON: Yes, you did.
25 You said -- asked a question. Go back

1 and look at what you said. You asked
2 her about the business proposal in
3 this e-mail.

4 MR. BOWER: No, I said, do you
5 see he notes this is a business
6 proposal.

7 BY MR. BOWER:

8 Q. That's my question. You see --
9 do you see those words on the paper, ma'am?

10 A. I see the words on the paper
11 that say attached.

12 Q. Okay. And then the e-mail on
13 top, right, you see Mr. Cohen writing to you,
14 he's saying: We think it hits on all the key
15 segments.

16 Do you see that?

17 A. I see that, yes.

18 Q. Had you had prior discussions
19 regarding these key segments with Mr. Cohen?

20 A. I can't recall.

21 MR. CIULLO: Object to form.

22 BY MR. BOWER:

23 Q. It could have happened, you
24 just don't recall it, right?

25 A. Correct.

1 Q. Okay. One of those key
2 segments is pricing, right? That's what it
3 says here?

4 MS. FUMERTON: Objection, form.

5 A. Yes, it says that here.

6 BY MR. BOWER:

7 Q. Right? And one of the other
8 key segments is futures with additional
9 oxy ER that puts others at a disadvantage.

10 Do you see that?

11 MS. FUMERTON: Objection, form.

12 A. I see that.

13 BY MR. BOWER:

14 Q. Do you know what he -- why he's
15 writing that to you there? Do you have a
16 recollection of that?

17 A. I do not recall.

18 Q. Okay. Do you know what oxy ER
19 is?

20 A. Yes, I do know that.

21 Q. What is oxy ER?

22 A. It's an extended release form
23 of oxycodone.

24 Q. Was -- do you recall whether
25 Walmart was purchasing extended release

1 oxycodone from someone else in 2009?

2 A. I do not recall.

3 Q. Do you recall whether this was
4 a new product for Walmart?

5 A. I do not recall.

6 Q. Okay. Do you know what
7 slotting allowances are?

8 A. Slotting allowance is a rebate
9 that is paid for bringing a new item into the
10 warehouse.

11 Q. Okay. In addition, he mentions
12 product-specific rebates. Do you see that?

13 A. I see that, yes.

14 Q. And this is -- this is after,
15 right, you have asked QualiTest for
16 additional oxycodone, correct, as we
17 discussed on Exhibit 3?

18 MS. FUMERTON: Objection, form.

19 A. This is after, yes. Now, I did
20 not request oxycodone ER from QualiTest.

21 BY MR. BOWER:

22 Q. Right. That was going to be my
23 next question. Those are different products,
24 correct?

25 A. That is accurate.

1 Q. Okay. Towards the end of his
2 e-mail to you, it says: Unlike other, we
3 have both ample supply and quota this year
4 and next.

5 Do you see that?

6 A. I see that, yes.

7 Q. Do you have any recollection
8 discussing with Mr. Cohen whether he had
9 ample supply to meet Walmart's needs?

10 MS. FUMERTON: Objection, form.

11 A. I do not recall.

12 BY MR. BOWER:

13 Q. It could have happened, you
14 just don't recall, correct?

15 A. Correct.

16 (Walmart-Little Exhibit 5
17 marked.)

18 BY MR. BOWER:

19 Q. I'm handing you what's been
20 marked as Exhibit 5.

21 Okay. You've been handed
22 what's been marked as Exhibit 5. This is
23 another -- this one does have a confidential
24 stamp, and it is an acquired Actavis
25 document. It's 00391 -- sorry, 00391960,

1 including the attachment this time. I
2 believe your counsel will note that the Bates
3 numbers are sequential this time, so
4 hopefully we have no objections.

5 And I'll note that this e-mail
6 is approximately 11 days after Exhibit 4.
7 This is an e-mail from Bob Miranda to
8 yourself cc'ing Steve Cohen, and it has
9 Walmart revised offer.

10 Do you see that?

11 A. I'm sorry, could you restate
12 that?

13 Q. Sure. I'm just, for the
14 record, reading in the -- kind of the details
15 on the "From" and "To" and the subject there.

16 MS. FUMERTON: Can I just ask
17 that she has an opportunity to review
18 the document.

19 BY MR. BOWER:

20 Q. Yes, please review the
21 document, and let us know when you're done.

22 MR. CIULLO: While we have a
23 second, I just want to, for the
24 record, represent that that missing
25 document in the last exhibit was

1 actually just a JPEG thing that says
2 Actavis.

3 MR. BOWER: Yeah, that's what I
4 thought, but since I have it here I
5 didn't need it, but I appreciate it.
6 Thanks.

7 MR. CIULLO: I just wanted to
8 clear that up for the record.

9 MR. BOWER: Hopefully that will
10 resolve your concerns.

11 MS. FUMERTON: It was a simple
12 concern.

13 MR. CIULLO: Legitimate
14 concern.

15 (Document review.)

16 BY MR. BOWER:

17 Q. Have you had a chance to review
18 the document, ma'am, or are you still
19 looking?

20 A. Yes.

21 Q. You're still looking? Okay.

22 A. Okay.

23 Q. I just have a couple of
24 questions on the e-mail, and then we can turn
25 to the document itself.

1 Do you recall having
2 discussions with either Mr. Miranda or
3 Mr. Cohen between September 3rd, 2009 and
4 September 14th, 2009 about this offer?

5 A. I do not recall.

6 Q. Certainly looks like it here,
7 right?

8 MS. FUMERTON: Objection, form.

9 BY MR. BOWER:

10 Q. He's sending you a revised
11 offer, correct?

12 A. Correct.

13 Q. So it's likely that you had
14 discussions with him in the interim about the
15 offer, right?

16 MS. FUMERTON: Objection, form.

17 A. I could have, yes.

18 BY MR. BOWER:

19 Q. That wouldn't have been unusual
20 in your experience, right?

21 A. That is correct.

22 Q. You note here in your e-mail to
23 him -- oh, by the way, before we do that, do
24 you have any understanding as to why Walmart
25 hasn't produced this document?

1 MS. FUMERTON: Objection, form.

2 A. I'm not sure what Walmart has
3 produced or has not produced.

4 BY MR. BOWER:

5 Q. Has Walmart ever asked you
6 about this document?

7 MS. FUMERTON: Objection, form.

8 A. Walmart has never asked me
9 about this document.

10 BY MR. BOWER:

11 Q. Has Walmart ever asked you
12 about any documents, whether you have them,
13 whether you have any contracts for this case?

14 MS. FUMERTON: Objection, form
15 in that to the extent you're --
16 actually, I'm instructing her not to
17 answer that question.

18 MR. BOWER: That's a yes-or-no
19 answer. You're instructing her not to
20 answer that question?

21 MS. FUMERTON: Yes, I am.

22 MR. BOWER: What's the basis
23 for your instruction?

24 MS. FUMERTON: To the extent
25 that you're invading attorney work

1 product or privileged information.

2 MR. BOWER: I'm just asking
3 whether she's been asked to produce
4 documents that are relevant to this
5 case. You're not going to let her
6 answer that question.

7 MS. FUMERTON: That's not what
8 you asked.

9 MR. BOWER: All right. Let me
10 ask it that way.

11 BY MR. BOWER:

12 Q. Have you been asked to produce
13 any potentially relevant documents for this
14 matter?

15 A. I have not.

16 Q. Did you have a phone while you
17 were at Walmart?

18 A. Did I have -- I have a phone,
19 yes.

20 Q. A cell phone?

21 A. Yes.

22 Q. A smartphone?

23 A. Yes.

24 Q. Did Walmart pay for that phone?

25 A. No.

1 Q. No. Did you communicate on
2 that phone to manufacturers about Walmart
3 business?

4 A. I could have, yes.

5 Q. Going back to Exhibit 5 for a
6 moment, your e-mail on Saturday,
7 September 12th, you note: Indirect prices
8 must be rebated back to direct cost.

9 What does that mean?

10 A. That means that the product is
11 purchased from McKesson, the vendor needs to
12 rebate us back to what our direct cost in the
13 warehouse is.

14 Q. And why were you concerned
15 about that for this specific product?

16 A. This was something --

17 MS. FUMERTON: Objection, form.

18 A. This was something that was
19 standard for we always ensured that we were
20 protecting our business by having rebates
21 back on indirect items to direct cost.

22 BY MR. BOWER:

23 Q. Right. And because, based on
24 your past experience, you were concerned that
25 Walmart might need to get this product from

1 McKesson, right, because you had run out of
2 these oxycodone in the past, correct?

3 MS. FUMERTON: Objection, form.

4 A. This is something that's basic
5 with every item, whether it's a C-II or
6 not --

7 BY MR. BOWER:

8 Q. Right.

9 A. -- a C-II.

10 Q. But your past experience with
11 this specific product, you had run out of it,
12 right?

13 MS. FUMERTON: Objection, form.

14 A. I'm not sure about these
15 individual SKUs.

16 BY MR. BOWER:

17 Q. Okay. But oxycodone in
18 general, you had had problems getting ample
19 supply, right?

20 MS. FUMERTON: Objection, form.

21 A. That's a potential. That's
22 potential.

23 BY MR. BOWER:

24 Q. Okay. Do you recall signing
25 this agreement?

1 A. I don't recall either way.

2 Q. You certainly could have,
3 correct?

4 A. I could have signed this
5 agreement, yes.

6 Q. Right. And you see that this
7 agreement entitles Walmart to a [REDACTED]
8 marketing fee.

9 Do you see that?

10 A. I see that.

11 Q. Okay. What was that for?

12 A. This would have been just an
13 additional way to get additional cost of
14 goods savings.

15 Q. Right. An incentive for
16 Walmart to purchase a product within ten
17 days, correct?

18 MS. FUMERTON: Objection, form.

19 A. An incentive for Walmart to --
20 it would have been just like lowering the
21 cost of good, but yes.

22 BY MR. BOWER:

23 Q. Well, they could have lowered
24 the cost of goods, couldn't they have,
25 without doing a marketing fee?

1 MS. FUMERTON: Objection, form.

2 A. I'm not sure of how they
3 account for things in their side, on the
4 manufacturer side.

5 BY MR. BOWER:

6 Q. Well, they're only paying a
7 marketing fee if Walmart's initial order is
8 placed within ten days, correct?

9 MS. FUMERTON: Objection, form.

10 A. That's correct.

11 BY MR. BOWER:

12 Q. And then did Walmart, in fact,
13 place such an order?

14 A. I can't recall.

15 Q. Documents would reflect whether
16 an order was placed or not, correct,
17 Walmart's purchasing records?

18 A. Yes.

19 Q. Did you have any discussions
20 with Mr. Cohen or Mr. Miranda regarding the
21 marketing fee?

22 MS. FUMERTON: Objection, form.

23 A. I can't recall.

24 BY MR. BOWER:

25 Q. Earlier on today you discussed

1 not recalling any such marketing fees related
2 to prescription opiates.

3 Do you recall that?

4 MS. FUMERTON: Objection, form.

5 A. I would have -- I would have to
6 go back and look at my records, but I could
7 have said that.

8 BY MR. BOWER:

9 Q. Does this refresh your
10 recollection whether Walmart did, in fact,
11 receive marketing fees in exchange for
12 purchasing prescription opiates?

13 MS. FUMERTON: Objection, form.

14 A. The marketing fee is listed in
15 this contract, but I haven't signed this
16 contract and I'm not sure if we executed this
17 contract.

18 BY MR. BOWER:

19 Q. If, in fact, you did execute
20 this contract, it would reflect Walmart
21 receiving a marketing fee for purchasing
22 prescription opiates, correct?

23 MS. FUMERTON: Objection, form.

24 A. This [REDACTED] is called a
25 marketing fee, but it's -- in all intents and

1 purposes for my business, it was a reduction
2 in the cost of goods.

3 BY MR. BOWER:

4 Q. But they're not reducing the
5 cost of goods, are they?

6 MS. FUMERTON: Objection, form.

7 A. It's -- we would consider it
8 the same as a rebate, which is a reduction in
9 the cost of goods.

10 BY MR. BOWER:

11 Q. But you also get a rebate here,
12 right? There's also a rebate in place?

13 MS. FUMERTON: Objection, form.

14 BY MR. BOWER:

15 Q. You see paragraph 6? Do you
16 see that?

17 A. Yes.

18 Q. Also an [REDACTED] rebate?

19 A. Yes.

20 Q. So marketing fee is in addition
21 to the rebate, correct?

22 MS. FUMERTON: Objection, form.

23 MR. BOWER: What's the nature
24 of your objection?

25 MS. FUMERTON: Because she's

1 been explaining what the term
2 "marketing fee" means to her and
3 you're using it a different way, so it
4 makes it potentially vague.

5 MR. BOWER: No, the question
6 was -- let me rephrase it. I'll ask
7 it differently.

8 BY MR. BOWER:

9 Q. The marketing fee reflected in
10 paragraph 4 is in addition to the [REDACTED] rebate
11 reflected in paragraph 6; is that correct?

12 MS. FUMERTON: Objection, form.

13 A. I would interpret what's under
14 Section 4 as sort of a sliding allowance
15 rebate for initially bringing this product
16 into the warehouse, and number 6, I think
17 their -- their intention is for me not to
18 just bring the product in and get the
19 [REDACTED]; they want me to keep the award with
20 them and not move it, frankly.

21 BY MR. BOWER:

22 Q. Right. They want to pay you
23 [REDACTED] to buy the product, and they then
24 want to give you a rebate to keep the
25 product, correct?

1 MS. FUMERTON: Objection, form.

2 A. I don't think I'm -- I think
3 they're lowering the cost of my goods by
4 [REDACTED]. I don't think it's a payment for
5 me to buy the product.

6 BY MR. BOWER:

7 Q. Is there a reason you're
8 quibbling with their description of marketing
9 fee?

10 MS. FUMERTON: Objection, form.

11 MR. CIULLO: Join.

12 A. They have "marketing fee" in
13 quotation marks. I just don't -- I think
14 we'd have to understand what they mean by
15 "marketing fee" being in quotation marks.

16 BY MR. BOWER:

17 Q. Well --

18 A. To me it means a rebate -- it
19 goes against cost of good.

20 Q. What's your basis for that
21 statement?

22 A. Because that's the way I've --
23 I would always attribute that, and because we
24 did not market C-IIs to end user customers.

25 Q. Why would Walmart receive a

1 marketing fee then?

2 MS. FUMERTON: Objection, form.

3 A. But it's stated in here it's a
4 marketing fee just to purchase the item.

5 BY MR. BOWER:

6 Q. Right. So in other words,
7 Actavis is paying Walmart [REDACTED] to
8 purchase oxycodone, correct?

9 MS. FUMERTON: Objection, form.

10 A. They're giving me an additional
11 [REDACTED] rebate to purchase the drugs.

12 BY MR. BOWER:

13 Q. Giving Walmart an incentive to
14 purchase oxycodone 15 and oxycodone 30,
15 correct?

16 MS. FUMERTON: Objection, form.

17 A. Correct.

18 BY MR. BOWER:

19 Q. Looking at paragraph 1 for a
20 moment, it notes that: Actavis agrees to
21 supply and Walmart agrees to purchase at
22 least 80% of its oxycodone requirements from
23 Actavis.

24 Do you see that?

25 MS. FUMERTON: I'm sorry, where

1 are we?

2 MR. BOWER: Paragraph 1, sorry.

3 MS. FUMERTON: Thanks.

4 A. Yes.

5 BY MR. BOWER:

6 Q. What does that mean?

7 A. That would mean that we would
8 purchase the majority of our need for these
9 two items from Actavis.

10 Q. And this estimated annual
11 requirement, do you see that?

12 A. Yes, I do.

13 Q. 114,000 of oxycodone
14 15-milligram, bottles of 100, correct?

15 A. Correct.

16 Q. And 108,000 of oxycodone
17 30 milligrams, bottles of 100, correct?

18 A. Correct.

19 Q. Where would those numbers have
20 come from?

21 MS. FUMERTON: Objection, form.

22 A. They would have come from an
23 estimate that I or another buyer would have
24 provided to them.

25 ///

1 BY MR. BOWER:

2 Q. These are numbers provided by
3 Walmart to Actavis, correct?

4 A. I would think that it is, yes.

5 Q. And then if you go to
6 paragraph 6, you see that the [REDACTED] requirement
7 is tied to the [REDACTED] quarterly rebate.

8 Do you see that?

9 A. Yes.

10 Q. And then Walmart is
11 representing in paragraph 7 that the
12 estimated annual requirement of oxycodone
13 15-milligram and 30-milligram are as defined
14 in paragraph -- on paragraph 2.

15 Do you see that?

16 A. I see that.

17 Q. So paragraph 7, Walmart is
18 confirming that those estimates are Walmart
19 estimates, correct?

20 A. That is correct.

21 Q. In paragraph 8, can you explain
22 what paragraph 8 means?

23 A. So Actavis was -- appears was
24 going to launch oxycodone ER in the future.
25 I'm not sure if there's a date listed on

1 here.

2 And they were -- there must
3 have been -- it looks like they weren't going
4 to have enough product to sufficiently supply
5 the market, so they were giving Walmart a set
6 allocation that Walmart was going to be able
7 to purchase from them.

8 Q. Okay. So Walmart wanted to
9 ensure that it had sufficient allocation of
10 the oxycodone ER when it was approved?

11 MS. FUMERTON: Objection, form.

12 A. I would always want to make
13 sure I had sufficient allocation of any
14 product to serve our customers, yes.

15 BY MR. BOWER:

16 Q. Right. Including oxycodone
17 extended release, right?

18 A. Yes.

19 Q. And you wanted to negotiate
20 that term with Actavis, right?

21 MS. FUMERTON: Objection, form.

22 MR. BOWER: I'll strike that.

23 BY MR. BOWER:

24 Q. You wanted to ensure that
25 Actavis provided Walmart with its expected

1 need, correct?

2 MS. FUMERTON: Objection, form.

3 A. I wanted to ensure Walmart had
4 access to that product.

5 BY MR. BOWER:

6 Q. And why did you want to ensure
7 that?

8 A. Because my job was to ensure
9 that Walmart had access to all prescription
10 drug products that our customers would bring
11 prescriptions in to fill.

12 Q. And how did you know that
13 customers would be bringing in prescriptions
14 for oxycodone extended release?

15 MS. FUMERTON: Objection, form.

16 A. Because there would have been a
17 brand-referenced product that we were already
18 selling.

19 BY MR. BOWER:

20 Q. Can you explain what you mean
21 by that?

22 A. This looks like language around
23 a new generic launch, and it appears that
24 Actavis would be a single player in that
25 market because that's the situation that

1 limits -- that has limits in the market to be
2 able to fill the potential.

3 Q. Well, aren't there also limits
4 because there's a quota limit for
5 prescription opiates?

6 MS. FUMERTON: Objection, form.

7 A. There's no other conversation
8 around oxycodone ER, though, so I'm -- with
9 no other knowledge to what's going on here,
10 I'm having to assume that this was a launch
11 of a new product that they were wanting us to
12 commit on, and they were offering us an
13 allocation of that product.

14 BY MR. BOWER:

15 Q. Have you ever had discussions
16 with manufacturers regarding limits, quota
17 limits for prescription opiates?

18 MS. FUMERTON: Objection, form.

19 A. I knew that there were quota
20 limits from the DEA in place, yes.

21 BY MR. BOWER:

22 Q. Okay. So could that be the
23 reason that Walmart's wanting to ensure it
24 has access to oxycodone ER, quota limits?

25 MS. FUMERTON: Objection, form.

1 A. The way this paragraph is
2 worded leads me to believe that this was a
3 new product that Actavis was launching in the
4 market, and if they were giving me a set
5 allocation, there's a reason why the whole
6 market was not going to be provided for.

7 I'm having to make an
8 assumption that they were the only person
9 coming in this market, and I would have known
10 we had business based off of a brand product
11 utilization that we were already selling.

12 BY MR. BOWER:

13 Q. Okay. I appreciate that
14 clarification.

15 So you would have looked at the
16 brand product utilization you were selling to
17 determine whether Walmart had a need for
18 oxycodone ER, correct?

19 A. That is correct.

20 Q. Do you recall what that brand
21 product was?

22 A. I believe it was OxyContin ER.

23 Q. Do you recall who was supplying
24 that product to Walmart?

25 A. Purdue was the manufacturer of

1 OxyContin ER.

2 Q. Do you recall ever signing any
3 contracts with Purdue for OxyContin ER?

4 A. I don't recall. I don't
5 remember.

6 Q. Walmart was at this point,
7 though, distributing that product, correct?

8 MS. FUMERTON: Objection, form.

9 A. The OxyContin ER?

10 BY MR. BOWER:

11 Q. Yes.

12 A. Yes.

13 MS. FUMERTON: Oh, yeah, she
14 was just asking if we could take a
15 break.

16 MR. BOWER: Oh, sure. Yeah.

17 THE VIDEOGRAPHER: Going off
18 the record, 10:37 a.m.

19 (Recess taken, 10:37 a.m. to
20 10:58 a.m.)

21 THE VIDEOGRAPHER: Back on
22 record. The time is 10:58 a.m.

23 (Walmart-Little Exhibit 7
24 marked.)

25 ///

1 BY MR. BOWER:

2 Q. Back on the record, Exhibit 7.

3 MS. FUMERTON: Are we on
4 Exhibit 7 or Exhibit 6?

5 MR. BOWER: I just gave her
6 Exhibit 7, sorry.

7 MS. BARTLETT: We skipped 6.

8 MR. BOWER: We skipped 6.
9 Sorry, we're skipping 6 for now.

10 MS. FUMERTON: Okay. Are you
11 going to use an Exhibit 6?

12 MS. BARTLETT: Huh-uh.

13 MR. BOWER: We may, we may not.

14 MS. FUMERTON: That's so
15 confusing later on.

16 MR. BOWER: I know, I know.

17 MS. FUMERTON: Can we just
18 change it?

19 MR. BOWER: You want to change
20 it?

21 MS. FUMERTON: Why don't you
22 change it, yeah.

23 MR. BOWER: Okay. Let's change
24 that.

25 MS. FUMERTON: Sorry, but it

1 just --

2 MR. BOWER: No, no, it's fine.

3 MS. FUMERTON: -- a year from

4 now --

5 MR. BOWER: I agree with that.

6 MS. FUMERTON: -- someone is

7 going to...

8 MS. BARTLETT: Then we're going

9 to change -- I need all new stickers.

10 They're all pre-marked.

11 MS. FUMERTON: I still would

12 change it. It's not going to take --

13 it's not that many. We're talking,

14 what, less than ten. Or are we

15 talking more than that?

16 MR. BOWER: Let's go off the

17 record.

18 THE VIDEOGRAPHER: Going off

19 the record. The time is 10:59 a.m.

20 (Discussion off the record.)

21 THE VIDEOGRAPHER: Back on

22 record, 11:01 a.m.

23 (Walmart-Little Exhibit 6

24 marked.)

25 ///

1 BY MR. BOWER:

2 Q. All right. Just so the record
3 is clear, we're going to enter a new
4 Exhibit 6 so we can keep our numbers
5 sequential. There we go. And then we'll do
6 Exhibit 7 after this one.

7 (Document review.)

8 BY MR. BOWER:

9 Q. Okay. You've been handed
10 what's been marked as Exhibit 6. It's a
11 Walmart document. It's WMT_MDL_000021802.

12 It appears to be a letter to
13 you from Mr. Robert Candea at Endo. Last
14 name is C-A-N-D-E-A. Please let me know when
15 you've finished reviewing the document.

16 A. Okay. I'm done.

17 Q. Okay. Are you familiar with
18 this document?

19 A. I don't recall this document.

20 Q. Okay. Do you recall purchasing
21 oxymorphone from Endo on behalf of Walmart?

22 A. I don't remember.

23 MR. BOWER: Our realtime has
24 gone out. Can we go off record for a
25 moment.

1 THE VIDEOGRAPHER: Off record,
2 11:02 a.m.

3 (Discussion off the record.)

4 THE VIDEOGRAPHER: Back on
5 record, 11:03 a.m.

6 BY MR. BOWER:

7 Q. I'll just read back the last
8 question. Do you recall purchasing
9 oxymorphone on behalf of Walmart from Endo?

10 A. I don't recall.

11 Q. Does this document refresh your
12 recollection that Walmart purchased
13 oxymorphone from Endo?

14 A. I signed the document, so I'm
15 going to have to say that it -- we probably
16 did.

17 Q. Is there any reason to believe
18 that you didn't?

19 A. There are some times that I
20 signed documents that we didn't move through
21 with the purchase, but I can't recall if
22 there were any reasons around this one that
23 we did not.

24 Q. Okay. You see here that Endo
25 is offering Walmart a one-time [REDACTED] off

1 invoice stocking allowance.

2 Do you see that?

3 A. I do.

4 Q. Right? So this terminology is
5 different than the marketing fee that we
6 looked at earlier, right?

7 A. That's correct.

8 Q. So different contracts have
9 different terms, right?

10 MS. FUMERTON: Objection, form.

11 BY MR. BOWER:

12 Q. Would you agree with that
13 statement?

14 A. Different manufacturers use
15 different terminology.

16 Q. Right. The question is:
17 Different contracts also use different
18 terminology, correct?

19 MS. FUMERTON: Objection, form.

20 A. So in purchasing, the main
21 contract that we use are these individual
22 item offers; they're really offer letters.
23 And so Endo's would all look similar,
24 Actavis' would all look similar, Teva's would
25 all look similar.

1 BY MR. BOWER:

2 Q. So is it your testimony that
3 all of Endo's contracts would have this
4 stocking allowance provision?

5 MS. FUMERTON: Objection, form.

6 A. Not -- not all of Endo's
7 contracts would have a stocking allowance.
8 It would -- that depends on the item.

9 BY MR. BOWER:

10 Q. This one does have a stocking
11 allowance, correct?

12 A. That's correct.

13 Q. And this one is for a
14 prescription opiate, correct?

15 MS. FUMERTON: Objection, form.

16 A. That is correct.

17 BY MR. BOWER:

18 Q. Did Walmart, in fact,
19 distribute oxymorphone to its pharmacies?

20 MS. FUMERTON: Objection, form,
21 asked and answered.

22 A. Yes, we did.

23 BY MR. BOWER:

24 Q. What is the reason for
25 having -- do you see -- strike that. It was

1 a poor question.

2 Do you see about two paragraphs
3 up from the bottom, it references this side
4 letter.

5 Do you see that?

6 A. I do see that.

7 Q. Okay. What would be the reason
8 that Walmart would enter this type of
9 agreement?

10 A. So the way Endo structures in
11 this situation -- the way they're structuring
12 this item offer is to make this an addendum
13 to their overall supplier agreement is what
14 I'm reading into this.

15 Q. And again, Endo is only
16 offering the [REDACTED] stocking allowance if the
17 initial order is made within a certain time
18 period, right?

19 A. That's correct.

20 Q. And going back to the box
21 there, where it has the pricing.

22 Do you see that?

23 A. Yes.

24 Q. What does the direct invoice
25 price reflect?

1 A. The direct invoice price would
2 be the price I pay for the PO that we cut or
3 the price that Walmart pays when they cut a
4 PO to purchase the product into the Walmart
5 warehouse.

6 Q. Okay. And then next column
7 over, what is the contract price of McKesson
8 reflect?

9 A. The contract price at McKesson
10 would be the price the store pays when they
11 purchase the product from McKesson.

12 Q. Okay. In that circumstance,
13 the store is paying money directly to
14 McKesson, correct?

15 MS. FUMERTON: Objection, form.

16 A. That is correct.

17 BY MR. BOWER:

18 Q. And then the last column over,
19 pricing rebate on wholesaler purchases.

20 Do you see that?

21 A. Yes.

22 Q. What does that amount reflect?

23 A. So that's similar to the
24 indirect rebate that we talked about earlier.
25 If the store has to receive the product from

1 McKesson and they pay the -- if you look at
2 this top item for the oxymorphone
3 5-milligram, if they pay the [REDACTED], we will
4 be rebated [REDACTED] off of that.

5 Q. And that rebate only occurs if
6 Walmart Distribution Center 6045 does not
7 have that product in stock; is that correct?

8 A. That is correct.

9 Q. I'm sorry, the numbering threw
10 me off again, but here's Exhibit 7 back.

11 MR. BOWER: You guys still have
12 7, right?

13 MS. FUMERTON: I do.

14 MR. BOWER: Okay.

15 BY MR. BOWER:

16 Q. Okay. Now you've been handed
17 what's been marked as Exhibit 7. You'll
18 notice the top of that document is redacted
19 because it's an Actavis document, and we're
20 not allowed to show you the communications
21 that you're not on, so that's the reason for
22 the redaction, just so you know.

23 A. Okay.

24 Q. So my questions will be
25 directed to the communications you are on,

1 which is just an e-mail from yourself to
2 Mr. Cohen.

3 Do you see that?

4 A. Yes.

5 MS. FUMERTON: And can I just
6 ask a clarifying question?

7 MR. BOWER: Sure.

8 MS. FUMERTON: So this is the
9 redaction that you put on.

10 MR. BOWER: Yes.

11 MS. FUMERTON: This is not how
12 Actavis -- okay. Thank you.

13 MR. BOWER: Yeah, I want to be
14 clear, yeah. The redactions --
15 there's a few more redactions that we
16 added because the following e-mail she
17 was not on.

18 MS. FUMERTON: Okay.

19 MR. BOWER: So just to avoid
20 any issues we just redacted the whole
21 thing.

22 MS. FUMERTON: Okay.

23 BY MR. BOWER:

24 Q. Can you just -- do you recall
25 this e-mail or what was going on in this time

1 period?

2 A. I do not.

3 Q. Okay. Can you just give us a
4 second and just read this e-mail and just
5 have -- I'm just going to ask you what your
6 reason is for e-mailing Steve, if this
7 refreshes your recollection.

8 A. So I'm asking him to make sure
9 this his product at McKesson has -- A, I'm
10 asking does McKesson have inventory, is there
11 an indirect contract price loaded, because
12 our stores are ordering product and they are
13 not able to get it from McKesson.

14 Q. So at this point in time, it
15 appears that stores were ordering product
16 from McKesson, correct?

17 A. I would take from that e-mail
18 that stores were ordering product from
19 McKesson.

20 Q. Right. Because it says, in
21 fact: Our stores are not getting ordered
22 product from McKesson. Right?

23 A. Yes.

24 Q. How would you have learned that
25 information?

1 A. I would have gotten complaints
2 from the stores.

3 Q. And who at the stores would
4 have complained to you? Would it be -- is
5 there some hierarchy or what's the process
6 for the stores getting information to you?

7 A. There's not a set process that
8 they have to follow. A store can send an
9 e-mail, they could reach out to their market
10 director, they could reach out to anyone they
11 wanted.

12 Q. Okay. What is the market
13 director?

14 A. The market director is a
15 management-level in operations.

16 Q. Are they responsible for the
17 pharmacies?

18 A. They're responsible for the
19 pharmacies, yes.

20 Q. Is there one market director
21 for each pharmacy?

22 A. No, a market director would
23 have a set number of pharmacies.

24 Q. Is it regional based?

25 A. It's based off of geography,

1 yes.

2 Q. Right. It's geographically
3 based?

4 A. Correct.

5 Q. And those market directors
6 would be one of the folks who could inform
7 you that the stores were not getting the
8 ordered product from McKesson; is that
9 correct?

10 A. They could be one of the people
11 that would reach out to us.

12 Q. And that would have been based
13 on the stores reaching out to them, correct?

14 MS. FUMERTON: Objection, form.

15 A. That would be my understanding.

16 BY MR. BOWER:

17 Q. Okay. Other than this
18 scenario, did you have any other reason to
19 interact with the market directors?

20 MS. FUMERTON: Objection, form.

21 A. We interacted with the market
22 directors all the time.

23 BY MR. BOWER:

24 Q. Under what circumstances would
25 you interact with them?

1 A. If there were any product
2 situations, if there were any needs, if we
3 were doing anything special at store level.

4 Q. Do you have any recollection
5 who the market -- is it market director? Am
6 I getting that right?

7 A. Yes.

8 Q. -- market director was for the
9 Ohio region?

10 A. I do not know.

11 Q. Do you know who would know
12 that?

13 A. I would think anyone in Walmart
14 operations would know that.

15 Q. Okay. Is there a reason you're
16 reaching out to Steve Cohen with this
17 question?

18 A. Well, one thing that I'm not
19 sure of, I had a pattern of just pulling old
20 e-mails to re-e-mail someone, so I know the
21 subject says oxycodone. I'm not a hundred
22 percent sure that this e-mail was about
23 oxycodone unless I could see the additional
24 chain that was in there that would refer back
25 to oxycodone, because it was easier sometimes

1 for me just to grab the last e-mail out of a
2 folder and then move forward and not
3 necessarily change the subject for that, so
4 I --

5 Q. Okay.

6 A. That's just something I'd like
7 to point out.

8 Q. Okay. So if you could see that
9 full e-mail, you would be able to tell what
10 product, in fact, that was referring to?

11 A. Correct.

12 Q. I wish I could show it to you,
13 but unfortunately, I can't today. You can
14 put that one aside.

15 (Walmart-Little Exhibit 8
16 marked.)

17 BY MR. BOWER:

18 Q. You've been handed what's been
19 marked as Exhibit 8. It's an e-mail from
20 Sally Steiner, S-T-E-I-N-E-R, to yourself.
21 It's a Walmart document ending in Bates
22 number 11737, and the attachment is two
23 pages.

24 Do you see that?

25 A. Yes.

1 Q. Who is Sally Steiner?

2 A. I'm just reading off the
3 e-mail --

4 Q. Oh, sure, I apologize.

5 MS. FUMERTON: Why don't you --

6 BY MR. BOWER:

7 Q. Take your time and review the
8 document. Thank you for reminding me.

9 MR. CIULLO: I'm sorry, can you
10 read the whole Bates number?

11 MR. BOWER: Sure. It's
12 WMT_MDL_000011737.

13 MR. CIULLO: Thank you.

14 MR. BOWER: Sure.

15 (Document review.)

16 BY MR. BOWER:

17 Q. Are you ready?

18 A. I'm done.

19 Q. Do you recall who Sally Steiner
20 was?

21 A. I don't know her. I see her
22 title on this e-mail, but I'm not -- I've
23 never personally met her that I'm aware of.

24 Q. Have you ever spoken with her?

25 A. Not that I'm aware of.

1 Q. What about Dave Irwin?

2 A. Dave Irwin, yes, I do know him.

3 Q. How do you know him?

4 A. He was the account contact for
5 Mallinckrodt for a period of time.

6 Q. Including during this time
7 period in September of 2009?

8 A. Correct.

9 Q. Do you remember him calling you
10 to discuss fentanyl?

11 A. I do not.

12 Q. Do you see the attachment
13 reflected on Exhibit 8 is a contract for
14 fentanyl?

15 A. Yes, I do.

16 Q. And fentanyl is a prescription
17 opiate, correct?

18 A. That is correct.

19 Q. Highly addictive, correct?

20 MS. FUMERTON: Objection, form.

21 A. I know there are some people
22 that are addicted to fentanyl, yes.

23 BY MR. BOWER:

24 Q. Fentanyl can be deadly, right?

25 MS. FUMERTON: Objection, form.

1 A. I'm sure fentanyl has caused
2 some deaths.

3 BY MR. BOWER:

4 Q. And here, this reflects that
5 Walmart was getting a rebate for fentanyl
6 purchases, right, [REDACTED] rebate?

7 MS. FUMERTON: Objection, form.

8 A. I believe at the time we
9 received a [REDACTED] rebate off of the entire book
10 of Mallinckrodt business, not just fentanyl
11 lozenges.

12 BY MR. BOWER:

13 Q. But it includes fentanyl,
14 correct?

15 A. That's what this is stating,
16 yes.

17 Q. Do you have any reason to
18 believe this statement in a contract that was
19 signed by Mr. Badeen is incorrect?

20 MS. FUMERTON: Objection, form.

21 A. I don't.

22 BY MR. BOWER:

23 Q. Do you have any reason to
24 believe that Walmart didn't, in fact, receive
25 a [REDACTED] rebate for fentanyl purchases from

1 Mallinckrodt?

2 A. No, I do not.

3 Q. What does primary position
4 mean? Do you know?

5 A. They would be the primary
6 vendor that we purchased the product from.

7 Q. And Mallinckrodt is offering
8 Walmart an additional [REDACTED] rebate if it places
9 this product in primary position; is that
10 correct? Sorry, I'll -- it's right under the
11 Additional Rebate Opportunity paragraph
12 there.

13 A. That is correct.

14 Q. Okay. And who at Walmart would
15 make that decision, whether a certain product
16 would be placed in primary position?

17 A. The buyer would make that
18 decision.

19 Q. So in this case, it would have
20 been Mr. Badeen?

21 A. Yes.

22 Q. And for the contracts that you
23 signed, it would have been you?

24 A. Yes.

25 Q. And what criteria would you use

1 to decide whether a product would be placed
2 in primary position?

3 A. There were multiple different
4 things. We would look at pricing, history
5 with that supplier, are they able to supply,
6 are they true, how many other players were in
7 the market, what other players were offering
8 this product at the time, was it just this
9 one, or was it two or three or four. Those
10 are some of the criteria we looked at.

11 Q. Pricing criteria for that?

12 A. We definitely looked at pricing
13 criteria on all drug awards, yes.

14 Q. Was pricing -- strike that.

15 What was the most important
16 criteria for determining whether something
17 would be in primary position?

18 MS. FUMERTON: Objection, form.

19 A. I can't speak for all buyers.
20 One of the main things that I looked at was
21 supply because in my position my main role
22 was to ensure that we had supply at the
23 store, then and pricing was another top
24 criteria, yes.

25 ///

1 BY MR. BOWER:

2 Q. There was no -- strike that.
3 Was there any written guidance
4 from Walmart provided to you to determine
5 what manufacturers should be placed in
6 primary position for a particular product?

7 A. No.

8 Q. You were left up to your own
9 discretion, correct?

10 A. That is accurate, yes.

11 Q. You can put this one aside.
12 (Walmart-Little Exhibit 9
13 marked.)

14 BY MR. BOWER:

15 Q. Let me hand you what's been
16 marked as Exhibit 9, so please review the
17 document before I ask you.

18 (Document review.)

19 BY MR. BOWER:

20 Q. Have you had a chance to review
21 the document?

22 A. Yes.

23 Q. Okay. Do you recall signing
24 this document?

25 A. I don't recall.

1 Q. Okay. What is KVK Tech?

2 A. That is a company that sold
3 oxycodone.

4 Q. Did Walmart purchase oxycodone
5 from them?

6 A. Yes, we did.

7 Q. Okay. And you, in fact, signed
8 this contract, correct?

9 A. I did.

10 Q. Okay. This is a contract for
11 oxycodone 10 and 20mg.

12 Do you see that?

13 A. I do.

14 Q. What's the difference between
15 10mg and 20mg?

16 A. The strength of the tablet.

17 Q. Do you recall why you needed to
18 acquire this product from KVK Tech?

19 A. I do not.

20 Q. I want to focus then your
21 attention to the text above your signature,
22 okay? It says: This agreement entitled
23 KVK Tech to the right of first refusal
24 corresponding to the contract position,
25 primary or secondary.

1 Do you see that?

2 A. I do.

3 Q. What does that mean?

4 A. That means if they were primary
5 on an award, if another manufacturer brought
6 to our -- brought to us a proposal at a lower
7 price, that we would allow KVK a chance to
8 rebid on price.

9 Q. Okay. And then it says: The
10 KVK Tech products listed above will be set up
11 as a primary position on indirect contract.

12 What does that mean?

13 A. They would list an indirect
14 contract. They would have an indirect
15 contract price at McKesson for those items.

16 Q. What does it mean to have a
17 primary position indirect contract?

18 A. I think "primary position" is
19 just verbiage. It just means they would load
20 an indirect contract through McKesson. Items
21 weren't listed in priority at McKesson on
22 what the stores could purchase as far as
23 primary or secondary.

24 Q. Okay. That was the source of
25 my confusion.

1 So for products being purchased
2 by Walmart for McKesson, who determines what
3 manufacturer's products should fill the
4 order?

5 A. On a C-II, the store has to
6 place an order for a specific NDC through the
7 Walmart system. They only can receive that
8 NDC. There's no substitution that's allowed
9 with C-IIs.

10 Q. Okay. And then it referenced
11 DEA 222 forms.

12 Do you see that?

13 A. Yes.

14 Q. What is a DEA 222 form?

15 A. It's my understanding that
16 that's a form that's needed when a store
17 purchases any kind of a C-II product.

18 Q. And it says: Will be sent to
19 your designated wholesaler.

20 Do you see that?

21 A. Yes.

22 Q. And who was Walmart's
23 designated wholesaler?

24 A. McKesson.

25 (Walmart-Little Exhibit 10

1 marked.)

2 BY MR. BOWER:

3 Q. Now, we're on to Exhibit 10,
4 which is just another two-page contract
5 signed by yourself. Just take a moment to
6 review it and let me know when you're done,
7 please.

8 And the Bates number of this
9 one is WMT_MDL_000025225.

10 (Document review.)

11 BY MR. BOWER:

12 Q. Are you ready?

13 A. Yes.

14 Q. Okay. This is another contract
15 you signed, correct?

16 A. Correct.

17 Q. Okay. And this contract is a
18 stand-alone offer.

19 Do you see that?

20 A. Yes.

21 Q. What does that mean?

22 A. What I'm interpreting from that
23 is this product is the one that's referenced
24 in the prior e-mail that we looked at, that
25 this would negate those volume limits that

1 were put on that prior contract.

2 Q. You want to pull out the e-mail
3 you're referring to, just so the record is
4 clear, so we can refer to a number?

5 A. Exhibit 5.

6 Q. Sorry, you're saying Exhibit 5?
7 The Actavis offer?

8 A. Yes.

9 Q. What is your testimony? Can
10 you clarify that?

11 A. It's my understanding that
12 this -- because it says it supersedes -- let
13 me find the exact words -- supersedes any and
14 all existing agreements between Walmart and
15 Actavis with respect to oxycodone CR.

16 Q. And does Exhibit 5 reflect
17 oxycodone CR?

18 A. Oxycodone CR and the
19 oxycodone ER are typically used
20 interchangeably.

21 Q. Okay. And is Exhibit 5
22 oxycodone ER?

23 A. In number 8 --

24 Q. Okay.

25 A. -- there's a reference to when

1 this product launches.

2 Q. Okay. So it's superseding the
3 allocation provision, correct?

4 A. That's my understanding.

5 Q. But it's not superseding the
6 terms in paragraph 2 of Exhibit -- of that
7 contract in Exhibit 5, correct?

8 MS. FUMERTON: Objection, form.

9 A. I would not -- I would not
10 think that it was superseding 2. I would
11 think it only referred to number 8.

12 BY MR. BOWER:

13 Q. And it's not superseding the
14 marketing fee, right?

15 MS. FUMERTON: Objection, form.

16 MR. CIULLO: Objection, form.

17 A. I would not think it would
18 supersede number 4.

19 BY MR. BOWER:

20 Q. Okay. So going back then to
21 Exhibit 10. Thank you for that
22 clarification.

23 Does this contract reflect that
24 Walmart is committing to purchase those units
25 allocated to it?

1 A. Yes.

2 Q. And Walmart is, in fact,
3 agreeing to do so in one purchase order,
4 correct?

5 A. Yes.

6 Q. But Actavis is reserving the
7 right to split the delivery of that order,
8 correct?

9 A. Yes.

10 Q. Do you have any idea why
11 Actavis would want to split that delivery
12 order?

13 MR. CIULLO: Object,
14 foundation.

15 A. As I recall, I believe this was
16 a settlement that the brand had made with
17 some generic companies, and in their -- as I
18 understand it, in their court settlement, the
19 generic companies were given set allocations
20 to ship over a time span.

21 So we were agreeing to purchase
22 a set number. They were only allowing us to
23 purchase a set number. We were agreeing to
24 purchase that set number, but they would ship
25 it to us at intervals, as they got their

1 allocation from the brand company.

2 BY MR. BOWER:

3 Q. Okay. How did you know at the
4 time you signed this agreement whether
5 Walmart had a need for these products?

6 A. We would have looked at the
7 utilization of the current brand item.

8 Q. And who again would provide
9 that utilization to you?

10 A. We would get reports from
11 planners or we could run that ourselves.

12 Q. You'd get reports from
13 planners?

14 A. Planners or business analytics,
15 whatever they called that department at the
16 time.

17 Q. Do you know what it was called?

18 A. At that time I don't remember
19 what it was called.

20 Q. And if you wanted to run it
21 yourself, what would you do?

22 MS. FUMERTON: Objection, form.

23 A. I could go to Retail Link and
24 pull a query of sales over the last time
25 period, whatever my time period was.

1 BY MR. BOWER:

2 Q. Do you know how far the data in
3 Retail Link went back?

4 MS. FUMERTON: Objection, form.

5 A. I do not know that.

6 BY MR. BOWER:

7 Q. What were some time periods
8 that you would look at?

9 MS. FUMERTON: Objection, form.

10 A. In this situation, I would
11 typically look at a few months.

12 BY MR. BOWER:

13 Q. So earlier when I asked you
14 about the primary position at McKesson -- do
15 you recall that discussion?

16 A. On the indirect items --

17 Q. Yes.

18 A. -- the primary position at
19 McKesson?

20 Q. Yes. And you said that
21 McKesson could only fill -- couldn't
22 substitute, they could only fill the specific
23 NDC number, correct?

24 A. For C-II purchases.

25 Q. For C-II purchases, correct?

1 And that's because it would
2 have been illegal for McKesson to fill if it
3 wasn't the identical NDC number, correct?

4 MS. FUMERTON: Objection, form.

5 A. I'm not sure about the legality
6 of it. It was my understanding that if a
7 store ordered a certain NDC, they could not
8 substitute for a different NDC.

9 BY MR. BOWER:

10 Q. How did you come to that
11 understanding?

12 A. That was just knowledge that I
13 gained in the department. I'm not sure of
14 how I learned that or not.

15 Q. Did someone tell you of that
16 policy at any point?

17 MS. FUMERTON: Objection, form.

18 A. Someone would have had to have
19 told me at some point because I wasn't born
20 knowing that knowledge, but at my time at
21 Walmart, somebody had told me that.

22 BY MR. BOWER:

23 Q. Are you aware of any written
24 policies and procedures that would provide
25 for that requirement?

1 A. I am not aware of any written
2 procedures, no.

3 (Walmart-Little Exhibit 11
4 marked.)

5 BY MR. BOWER:

6 Q. You've been handed what's been
7 marked as Exhibit 11. It's another contract.
8 This one is just one page. Please take a
9 moment and review it, let me know when you're
10 done.

11 (Document review.)

12 BY MR. BOWER:

13 Q. Okay. Are you ready?

14 A. I am ready.

15 Q. This is another one-time
16 purchase agreement, correct?

17 MS. FUMERTON: Objection, form.

18 BY MR. BOWER:

19 Q. If you look at the second
20 bullet point, under that?

21 A. Yes, I see that.

22 Q. Okay. What is the -- so let me
23 ask that question again.

24 Do you agree this is a one-time
25 purchase agreement?

1 A. Yes.

2 Q. Okay. What was the purpose of
3 this agreement, if you can recall?

4 A. I don't remember this agreement
5 exactly, but it -- I would infer from the
6 time period, I would think it was the same,
7 that Apotex had gotten a -- were part of the
8 settlement with Purdue on the OxyContin ER,
9 and that they had product to offer.

10 Q. And you're referring back to
11 Exhibit 10?

12 A. Yes, that is correct.

13 Q. Okay. And this is the same
14 product; is that correct?

15 A. That is correct.

16 Q. Okay. And how can you tell
17 it's the same product? What are you looking
18 at?

19 A. I'm looking at the product
20 strength and size, and on Exhibit 10, the
21 product description.

22 Q. Okay. So even though one has
23 CR -- I mean HCL and the other doesn't, it's
24 the same product, correct?

25 A. That's correct.

1 Q. Okay. I just wanted to confirm
2 that.

3 This has -- also has available
4 units. Do you see that?

5 A. I see that.

6 Q. Okay. So would it be your
7 expectation that before signing this
8 agreement, you would have ensured that
9 Walmart had a need for 22,563 units of
10 oxycodone 40mg?

11 A. I would have flipped it past
12 utilization, and then I would have also asked
13 the vendors -- I would have wanted to know
14 when is a full generic coming into the market
15 to know am I purchasing for today's demand or
16 am I trying to purchase for a year's demand,
17 because a generic is not going to be in the
18 market until -- I'm just guessing --
19 November 2010. I'm just making that up.

20 Q. Okay. Well, but if it -- if a
21 generic wasn't coming online for almost a
22 year later, you wouldn't hold that in
23 inventory, would you, for a whole year, this
24 amount?

25 MS. FUMERTON: Objection, form.

1 A. I would try not to. I would
2 try to purchase the product and commit to the
3 product and have the manufacturer hold it and
4 purchase it as I needed it.

5 BY MR. BOWER:

6 Q. And how would -- if you can
7 just describe, just high-level speaking with
8 respect to prescription II opiates, what do
9 you mean by purchase it as you need it?

10 MS. FUMERTON: Objection, form.

11 A. As the distribution center
12 would run low on product, then I would place
13 another PO and purchase the product into the
14 distribution center.

15 BY MR. BOWER:

16 Q. Would you get alerts when the
17 distribution center was running low on a
18 product?

19 A. Replenishment would place those
20 orders as needed.

21 Q. They would get alerts from a
22 distribution center that a product, for
23 example, was running under a certain amount?

24 A. When they -- when replenishment
25 orders, it's my understanding that they have

1 a program in the computer that they review
2 every item in inventory and place orders as
3 needed.

4 Q. Are you copied on those orders
5 as they're placed?

6 A. I am not.

7 Q. Are you informed of those
8 orders as they're placed?

9 A. I am not.

10 Q. Okay. How did you know at the
11 time you would have signed this agreement
12 that Walmart then had a need for this
13 product?

14 MS. FUMERTON: Objection, form.

15 A. I would have looked at the past
16 utilization of the product and then I would
17 have taken the information on when the new
18 generic would be fully stocked in the market
19 and made decisions off of those two points.

20 BY MR. BOWER:

21 Q. Would you have also had to look
22 at the inventory on hand at the distribution
23 center?

24 A. We wouldn't have warehoused the
25 brand to my knowledge. If we warehoused the

1 brand, I would have needed to have looked at
2 that inventory, but I -- to my knowledge, I
3 don't think we warehoused the brand.

4 Q. Can you just explain for the
5 record what you mean by warehoused the brand?

6 A. Was it in the Walmart
7 distribution center.

8 Q. This is a generic reflected on
9 here, correct?

10 A. Yes, this is the generic. When
11 I'm making decisions on the generic, if I was
12 concerned about overinventoried numbers, I
13 would look at what the brand product was and
14 were we sitting on excess brand product in
15 the warehouse.

16 Q. Okay. So you would have looked
17 at those numbers prior to signing this
18 agreement, correct?

19 MS. FUMERTON: Objection, form.

20 A. Yes, I would have reviewed --
21 if we warehoused the brand, I would have
22 reviewed if we had product in the
23 distribution center, yes.

24 BY MR. BOWER:

25 Q. Well, if you hadn't warehoused

1 the brand, how would you have determined how
2 much units you needed?

3 A. I would still have -- if we did
4 not warehouse the brand, I would still have
5 data on how many prescriptions we had
6 dispensed of the brand product.

7 Q. Okay. Where would you pull
8 that data from?

9 A. That would be available in
10 Retail Link.

11 Q. And in that scenario, if the
12 warehouse had not -- strike that.

13 What does it mean to warehouse
14 the brand?

15 A. We would purchase it in our
16 distribution centers and then send it to the
17 stores as the stores ordered it.

18 Q. Okay. But if Walmart has not
19 warehoused a brand, right, how is it that
20 Walmart is filling prescriptions for that
21 product?

22 A. We would have created an item
23 number for the product and the stores would
24 have ordered that item number from McKesson,
25 and McKesson would have shipped that product

1 to the stores.

2 Q. So in that case, McKesson is
3 shipping product directly to the stores for a
4 product that Walmart does not distribute at
5 all, correct?

6 A. That Walmart does not
7 distribute? But with all prescription
8 medicine, we can't warehouse every
9 prescription medicine. There's thousands of
10 SKUs and our warehouse wouldn't hold that
11 volume.

12 Q. Okay.

13 A. So --

14 Q. And let me try to clarify my
15 question.

16 Earlier today we had a
17 discussion where I believe your testimony was
18 that McKesson would only fill an order for
19 prescription opiates if the warehouse was out
20 of the product, correct?

21 A. That is correct.

22 Q. Now you're talking about a
23 situation where a product is not distributed
24 by Walmart, correct?

25 A. Yes. Let me clarify.

1 Q. And in that scenario -- could
2 you just --

3 A. Yes, I'm sorry.

4 Q. Go ahead.

5 A. That's okay, you finish.

6 Q. In that scenario, would the
7 pharmacy order directly from McKesson?

8 MS. FUMERTON: Objection, form.

9 A. No, the pharmacy would not
10 order directly from McKesson. We would still
11 have to create an item number in our system,
12 a Walmart item number for that item, and the
13 stores would still put the order in through
14 the Walmart system. And then, since the
15 distribution center -- we don't warehouse the
16 item, so there's no inventory in the
17 distribution center, the order would then be
18 routed to McKesson.

19 BY MR. BOWER:

20 Q. Okay. Would that order be
21 routed directly to McKesson or would someone
22 at the distribution center review that order?

23 A. It would have to go to the
24 distribution center and then I'm not sure the
25 processes at the distribution center, but

1 then the order would go to McKesson.

2 Q. Okay. And who is placing those
3 orders? Is it the replenishment team still,
4 or is it the pharmacies themselves?

5 MS. FUMERTON: Objection, form.

6 A. Placing the orders for an item
7 that's not warehoused?

8 BY MR. BOWER:

9 Q. Yes.

10 A. The pharmacies.

11 Q. The pharmacies themselves?

12 A. Yes.

13 Q. Going back to Exhibit 11, and I
14 appreciate that clarification.

15 Bullet point two references the
16 Walmart/Apotex Strategic Agreement Program.

17 Do you see that?

18 A. Yes.

19 Q. What does that refer to?

20 A. We had certain vendors that we
21 worked with on -- we called them our
22 strategic suppliers, and we worked with them
23 on -- we would review our business and any
24 issues we had in the past. We would look
25 into the future to new launches and maybe do

1 some pre-commitments on those new launches to
2 try to get better pricing in the market.

3 Q. How, if at all, was a strategic
4 agreement program different than a
5 contractual agreement to supply Walmart with
6 product?

7 A. I don't think it was, and I --
8 I'm not familiar with this terminology, if
9 she's referring to that strategic agreement
10 program we had in place or if they had some
11 sort of overarching contract that I just am
12 not remembering.

13 Q. Well, but you're -- this is a
14 one-page contract, right?

15 A. This is a one-page contract,
16 yes.

17 Q. And you're the only one at
18 Walmart to sign this agreement, right?

19 A. That's correct.

20 Q. Your testimony today is you
21 don't know what that Walmart strategic
22 agreement program refers to?

23 MS. FUMERTON: Objection, form.

24 A. Today I don't know, but this
25 was eight years ago, and I've had a lot of

1 one-page contracts and relationships with
2 vendors, and I don't remember that today, no.

3 BY MR. BOWER:

4 Q. All right. Approximately how
5 many manufacturers supply Walmart with
6 prescription opiates?

7 MS. FUMERTON: Objection, form.

8 A. I don't know the number.

9 BY MR. BOWER:

10 Q. Just approximately.

11 MS. FUMERTON: Objection, form.

12 A. Five. Five.

13 BY MR. BOWER:

14 Q. Five? Okay.

15 So far today we've seen Apotex,
16 right?

17 A. Yes.

18 Q. QualiTest?

19 A. Yes.

20 Q. Right? Actavis?

21 A. Yes.

22 Q. Right. Mallinckrodt?

23 A. Yes.

24 Q. Right. What are the other ones
25 that come to mind? Purdue, right?

1 A. I'm not sure that we bought
2 directly from Purdue into the warehouse, but
3 Purdue was a maker of opioids that the stores
4 purchased; whether it was from McKesson or
5 the warehouse -- I was thinking you were just
6 referring to the warehouse.

7 But I know Teva.

8 Q. J&J or any of their
9 subsidiaries?

10 A. J&J was a brand. I'm not as
11 familiar with their portfolio. Again, that
12 would have gone through McKesson.

13 Q. Okay. Watson?

14 MS. FUMERTON: Objection, form.

15 MR. CIULLO: Object to form.

16 MS. FUMERTON: I just think --
17 there's a series of questions here
18 pending after the one where there's
19 confusion so I can keep objecting to
20 form.

21 BY MR. BOWER:

22 Q. I mean, do you understand the
23 question?

24 A. Yes. Watson was -- I'm not
25 sure at what point -- Watson was bought out

1 by Actavis, and I'm not sure where that
2 starts to overlap.

3 Q. Okay. Who is Dave Irwin?

4 A. Dave Irwin was the national
5 account manager at Mallinckrodt.

6 Q. Did you ever meet with him in
7 person?

8 A. Yes, I did.

9 Q. Where did those meetings take
10 place?

11 MS. FUMERTON: Objection, form.

12 A. At the home office, we met. I
13 can speculate that we met at NACDS and ECRM
14 because I met with most manufacturers at
15 those conferences.

16 BY MR. BOWER:

17 Q. Did you provide utilization
18 info to manufacturers?

19 A. Yes.

20 Q. And how would you provide that
21 information? Via e-mail or in person?

22 A. It could be via e-mail, it
23 could be over the phone, it could be in
24 person. It could be any of those.

25 Q. And what type of utilization

1 info would you provide to them?

2 MS. FUMERTON: Objection, form.

3 A. NDC or product utilization. If
4 they were launching a product and needed
5 utilization to understand if they could pick
6 up our business, we would provide that
7 utilization.

8 BY MR. BOWER:

9 Q. And you did so in the context
10 of trying to negotiate a different supplier
11 agreement? Strike that.

12 In other words, why were you
13 sharing that information with manufacturers?

14 A. If we were requesting proposals
15 for business, we would need to share that
16 information so that they could formulate
17 pricing and they could understand if they
18 could pick up our volume.

19 Q. And why would you be requesting
20 proposals for business if you were already
21 purchasing a product from another
22 manufacturer?

23 A. If that manufacturer had not
24 been able to supply fully for whatever
25 reason, then I would request proposals.

1 Q. Would you also request
2 proposals to get better pricing?

3 A. Yes.

4 Q. Are you familiar with a company
5 called Ethex, E-T-H-E-X?

6 A. Ethex.

7 Q. Ethex.

8 A. Yes.

9 Q. Did they ever approach you to
10 supply Walmart with oxy?

11 A. Ethex went out of business
12 shortly after I came to Walmart. I'm not
13 sure of the dates or what -- what may have --
14 I don't recall.

15 Q. Do you recall telling Mr. Irwin
16 in 2010 that they approached you to supply
17 oxy?

18 A. I don't recall that, no.

19 Q. Do you recall speaking with
20 Mr. Irwin asking for growth of the oxy
21 market?

22 MS. FUMERTON: Objection, form.

23 A. I don't recall that, no.

24 BY MR. BOWER:

25 Q. You don't recall that ever

1 happening?

2 A. No.

3 Q. Do you recall ever asking
4 anyone about the assessment of the growth in
5 the oxy market?

6 MS. FUMERTON: Objection, form.

7 A. I don't recall that, no.

8 BY MR. BOWER:

9 Q. You don't recall that ever
10 happening in your entire career at Walmart,
11 ever asking anybody about the growth of the
12 oxy market?

13 MS. FUMERTON: Objection, form.

14 A. I do not remember ever asking
15 that question, no.

16 BY MR. BOWER:

17 Q. Do you recall being concerned
18 about supply issues for OxyContin in 2010?

19 MS. FUMERTON: Objection, form.

20 A. I don't recall specific dates.
21 I recall being concerned about supply issues
22 on all of the products in my portfolio, yes.

23 BY MR. BOWER:

24 Q. Including OxyContin?

25 MS. FUMERTON: Objection, form.

1 A. OxyContin was in my portfolio.

2 BY MR. BOWER:

3 Q. Do you recall meeting with
4 Mr. Irwin to discuss your concerns?

5 MS. FUMERTON: Objection, form.

6 A. We met on multiple occasions.
7 I don't remember the conversation specifics.

8 BY MR. BOWER:

9 Q. Are you familiar with a VIP
10 agreement you had with -- what company was
11 Mr. Irwin with again? I forget.

12 A. Mallinckrodt. At around 2010?

13 Q. Yeah.

14 A. Mallinckrodt.

15 Q. Did you have a VIP agreement
16 with Mallinckrodt during that period?

17 MS. FUMERTON: Objection, form.

18 A. I don't remember the specific
19 agreement, no.

20 BY MR. BOWER:

21 Q. Just generally, did Walmart
22 have a VIP agreement with Mallinckrodt during
23 that time period?

24 MS. FUMERTON: Objection, form.

25 A. I don't remember the names of

1 specific agreements or rebate programs.

2 It's -- we could have possibly. I just don't
3 remember.

4 BY MR. BOWER:

5 Q. Do you have any -- as you sit
6 here today, any understanding what a VIP
7 agreement would refer to?

8 A. I don't know what the VIP
9 agreement means, no.

10 Q. Okay. Do you recall being
11 concerned about Actavis having limited
12 inventory of oxy ER?

13 A. I don't -- I don't remember
14 that specific, but it's likely because I was
15 always concerned about product limitations on
16 any products that I was managing.

17 Q. What products were you managing
18 in the 2010 time period?

19 A. I don't remember the exact
20 categories, but I would have pain, heart
21 health, GI, urinary, skin health. I did not
22 have diabetes in 2010, I know that.

23 Q. Okay.

24 A. But we would have five or
25 six -- four or five overarching categories.

1 Pain was one of the categories, and opiates
2 were a small subsection of the pain category.

3 Q. Okay. Let's talk about the
4 pain category then. When you say opiates
5 were a small subsection, what do you mean by
6 that?

7 A. Well, we also had other items
8 in pain. You had diclofenac, you would have
9 ibuprofen, you would have any
10 anti-inflammatory, you would have creams or
11 ointments that were meant for pain. There
12 are other items in that overarching category
13 besides just C-IIs.

14 Q. With respect to the pain
15 category, were there other C-IIs that were
16 not prescription opiates?

17 A. Yes. They weren't in the pain
18 category. They would have been in mental
19 health under ADHD.

20 Q. Okay. My question was, though,
21 pain category.

22 A. Oh, in the pain category --

23 Q. Yes.

24 A. I'm sorry, could you repeat the
25 question?

1 Q. Sure.

2 With respect to the pain
3 category, were there other C-IIs that were
4 not prescription opiates?

5 A. I do not recall exactly.

6 Q. Well, you were responsible for
7 that at Walmart, right?

8 MS. FUMERTON: Objection, form.

9 A. I was responsible for C-IIs at
10 Walmart. I was not responsible for knowing
11 if the chemical composition contained an
12 opioid or not.

13 BY MR. BOWER:

14 Q. Are you familiar as you sit
15 here today with any other C-II you purchased
16 for the pain category that was not an opiate?

17 MS. FUMERTON: Objection, form.

18 A. There were other -- there were
19 C-IIs that I purchased. I just don't know if
20 they were all opioids or not is what I'm
21 saying.

22 BY MR. BOWER:

23 Q. What ones come to mind sitting
24 here today that you're unsure about?

25 A. Well, there's -- morphine was

1 in there, and there was Demerol that was in
2 there. There was hydromorphone that was in
3 there.

4 Q. Well, you know hydromorphone is
5 an opiate, right?

6 A. I know that hydromorphone is an
7 opiate.

8 Q. You know morphine is an opiate,
9 right?

10 A. Well, I'm not -- today, I don't
11 know. I'd have to research those items to
12 know if they're all actually opioids or not.
13 I don't know that off the top of my head
14 today.

15 Q. So you're unsure as you sit
16 here today whether hydromorphone is an
17 opiate?

18 A. Today I know that hydromorphone
19 is an opiate.

20 Q. And what about morphine, you're
21 unsure about that one?

22 A. I would have to -- I would have
23 to go research it. I couldn't say that off
24 the top of my head, no.

25 Q. That was never a consideration

1 when you were making your buying decisions,
2 right, whether something was an opiate or
3 not?

4 A. It was a consideration whether
5 it was a C-II, but not necessarily an opioid.

6 Q. Okay. And what consideration
7 did you give something that was a C-II? How
8 would you treat that differently?

9 MS. FUMERTON: Objection, form.

10 BY MR. BOWER:

11 Q. I'm just using your words. You
12 said it was a consideration whether it was a
13 C-II. What does that mean?

14 A. We knew if the items were only
15 going to come from McKesson we had to create
16 item numbers so the stores could purchase
17 them, which was different than other
18 products.

19 Q. But Walmart didn't only get
20 C-IIIs from McKesson, did it?

21 MS. FUMERTON: Objection, form.

22 A. No.

23 BY MR. BOWER:

24 Q. So when you say I was -- it was
25 a consideration whether it was a C-II, how

1 did that impact your buying decisions?

2 MS. FUMERTON: Objection, form.

3 A. If a store was going to
4 purchase an item from McKesson that was not a
5 C-II, they -- we didn't have to have a
6 Walmart item number created for that item.

7 If the item was a C-II, we had
8 to have a Walmart item number created for
9 that item.

10 BY MR. BOWER:

11 Q. Other than having a number
12 created for an item, did the fact that a
13 product was a C-II have any other impact on
14 your purchasing decisions?

15 MS. FUMERTON: Objection, form.

16 A. Not in -- not in purchasing
17 decisions.

18 BY MR. BOWER:

19 Q. Did it -- did it have any
20 impact at all in your business at Walmart --

21 MS. FUMERTON: Objection.

22 BY MR. BOWER:

23 Q. -- other than what you've
24 already stated?

25 MS. FUMERTON: Sorry.

1 Objection, form.

2 A. We kept a list of controlled
3 drugs. I would have to make sure that that
4 item was added to that list. There were some
5 administrative things.

6 BY MR. BOWER:

7 Q. Can you explain what you mean
8 by that? You kept a list of controlled
9 drugs. What does that mean?

10 A. There was a C-II form that had
11 the list of all the controlled drugs that we
12 had the item numbers created for as a
13 reference for anyone who would need that
14 item.

15 If I was going to -- if I was
16 going to create that item and add an item
17 number to that form, I would have to add that
18 item number to the form is what I meant to
19 say.

20 Q. Okay. So in other words --

21 A. I would have to create it, but
22 it's an administrative...

23 Q. Okay. So in other words, if
24 you're selling -- if you're going to be
25 buying a new C-II item that Walmart hadn't

1 purchased in the past, you would have to add
2 it to that list, correct?

3 A. Correct.

4 Q. Other than creating a number
5 and adding it to a list, did the fact that a
6 product was a C-II have any other impact on
7 your buying decisions?

8 MS. FUMERTON: Objection, form.

9 A. No.

10 MS. FUMERTON: We're right at
11 12:00. Is this a good stopping point?

12 MR. BOWER: Let me just see.
13 Just give me one second.

14 MS. FUMERTON: Are you okay
15 with going for a couple of more
16 minutes?

17 MR. BOWER: We may not. Let me
18 just -- I just want to see if I can
19 wrap up this whole question --

20 MS. FUMERTON: Okay.

21 MR. BOWER: -- contract issue
22 quickly.

23 Let's just do one more and then
24 we can take a lunch break. Just
25 another brief contract.

1 (Walmart-Little Exhibit 12
2 marked.)

3 BY MR. BOWER:

4 Q. Okay. You've been handed
5 what's been marked as Exhibit 12. It's just
6 another short contract that appears to have
7 your signature. Please take a moment, review
8 it, and let me know when you're done.

9 This is an Actavis document,
10 the Bates number is ACTAVIS1144542.

11 MR. CIULLO: Again, I'll raise
12 the same objection before that to the
13 extent it's produced under the
14 Allergan MDL case numbers --

15 MR. BOWER: It says
16 confidential on it.

17 MR. CIULLO: Strike that.
18 Thank you.

19 MR. BOWER: Sure. I tried to
20 pull the confidential ones that I
21 could find.

22 Let me know when you're done,
23 okay?

24 THE WITNESS: Okay.

25 (Document review.)

1 MS. FUMERTON: I'll just note
2 for the record with respect to
3 Exhibit 12 that in the upper
4 right-hand corner it suggests it's
5 page 3 of 4, and it's a two-page
6 document.

7 MR. BOWER: And I'll note for
8 the record that Walmart did not
9 produce this document. I'm not sure
10 why. There's lots of documents here
11 Walmart hasn't produced.

12 So if you want to inform us as
13 to why, that would maybe help clear up
14 the record.

15 That's why we're using lots of
16 documents from other defendants
17 because Walmart hasn't produced much
18 of this stuff. Very concerning.

19 MS. FUMERTON: Well, I disagree
20 with your characterizations, but in
21 any event, has Actavis -- did you make
22 this document from a four-page
23 document to a two-page document?

24 MR. BOWER: I tried -- I don't
25 recall, but what I do recall trying to

1 do is provide the complete contract so
2 the record was clear.

3 MS. FUMERTON: Okay. So we'll
4 just make --

5 MR. BOWER: If Walmart wants to
6 make a supplemental production that it
7 believes this contract is not clear or
8 if it has this contract in its
9 possession, custody or control, it
10 should produce it.

11 MS. FUMERTON: I'm talking
12 specific to this exhibit, and I'm
13 saying that this particular exhibit
14 suggests that there's two missing
15 pages --

16 MR. BOWER: And if Walmart has
17 this specific contract, it should
18 produce it. And if Walmart has any of
19 these contracts, it should produce
20 them.

21 MS. FUMERTON: I'm objecting to
22 this exhibit because it appears
23 there's two pages missing.

24 MR. BOWER: It does not appear.
25 It says page 3 of 4. Excuse me.

1 Let's ask the witness whether she
2 believes there's a page missing from
3 this contract.

4 BY MR. BOWER:

5 Q. Have you had a chance to review
6 the document?

7 MS. FUMERTON: Okay. To be
8 clear, since you're misunderstanding
9 my objection, my objection is to the
10 exhibit. There appears that there are
11 a couple of pages missing from the
12 exhibit as indicated on the document
13 itself.

14 MR. BOWER: No, this is
15 intended --

16 MS. FUMERTON: I'm not making a
17 statement as to whether or not the
18 contract is or is not complete.

19 MR. BOWER: Are you finished?

20 MS. FUMERTON: Yes.

21 MR. BOWER: Okay. For the
22 record, this exhibit is intended to be
23 a contract that Walmart signed. It
24 appears to us to be a two-page
25 contract.

1 If that's wrong, please let us
2 know and we'll try to figure out why
3 something is missing.

4 And I would note that if
5 Walmart would, in fact, produce these
6 contracts, we might have more insight
7 as to what they allege is missing.

8 MS. FUMERTON: Again --

9 MR. BOWER: So with that --

10 MS. FUMERTON: Zach, you keep
11 misrepresenting what I'm saying. I'm
12 not making any representation as to
13 whether or not there's something
14 missing from the contract.

15 I'm saying there's something
16 that appears to be missing from the
17 document and the exhibits because
18 there are two pages that are missing.

19 So if you're going to repeat
20 what I said, I would appreciate it if
21 you would do so accurately and to not
22 interject all sorts of other
23 misleading information.

24 MR. BOWER: Okay.

25 MS. FUMERTON: The record will

1 say what it is, and I suggest we move
2 on.

3 MR. BOWER: Just to clear up
4 what you said, my response to that is:
5 I think Walmart should produce these,
6 okay?

7 BY MR. BOWER:

8 Q. So with that, have you had a
9 chance to review the documents?

10 A. I did.

11 Q. Okay. Does this appear to you
12 to be the complete agreement that you signed
13 in February 2010?

14 A. Yes, it does.

15 Q. It's a two-page contract,
16 correct?

17 A. Correct.

18 Q. Okay. And I just have a couple
19 of questions on this one. Are those your
20 initials where you cross out on the box on
21 the first page the last product there?

22 A. Yes, they are.

23 Q. Do you have any understanding
24 as to what circumstances would have led you
25 to cross that out?

1 A. If I felt like we were holding
2 too much inventory or I had committed to
3 purchase too much inventory, I would cross
4 that out and then not purchase that item.

5 Q. This is another standalone
6 agreement with Actavis, correct?

7 A. Yes.

8 Q. Is it your understanding that
9 this standalone agreement was entered into
10 for the same reasons as the earlier one we
11 saw?

12 MS. FUMERTON: Objection, form.

13 A. I think this is an additional
14 agreement related to the settlement with
15 Purdue and Actavis on OxyContin ER.

16 BY MR. BOWER:

17 Q. And that's the reason that
18 Walmart repeatedly enters into these
19 standalone agreements, correct?

20 A. Yes.

21 MS. FUMERTON: Objection, form.

22 A. As I remember.

23 MR. BOWER: Okay. Thank you.

24 We can break for lunch.

25 THE VIDEOGRAPHER: Going off

1 the record, 12:06 p.m.

2 (Recess taken, 12:06 p.m. to
3 12:48 p.m.)

4 THE VIDEOGRAPHER: Back on
5 record, 12:48 p.m.

6 BY MR. BOWER:

7 Q. Good afternoon, Ms. Little.
8 You understand you're still under oath?

9 A. Yes, I do.

10 Q. I just have a couple of cleanup
11 questions from this morning.

12 We talked about how the buying
13 side of the Walmart business was split up
14 into different categories, correct?

15 A. That's correct.

16 Q. Okay. Was it ever the case
17 that more than one person would be
18 responsible for the pain category at the same
19 time?

20 A. No.

21 Q. Okay. So it was organized with
22 the intent of having one person having
23 responsibility during any given time period;
24 is that correct?

25 MS. FUMERTON: Objection, form.

1 A. For the -- from a buying
2 perspective, yes, but you would have
3 additional replenishment or pricing or
4 different team members that would have other
5 functions.

6 BY MR. BOWER:

7 Q. Were there team members
8 specifically focused on pricing?

9 MS. FUMERTON: Objection, form.

10 A. Merchandising, pharmacy
11 merchandising has a pricing department.

12 BY MR. BOWER:

13 Q. Would you work with them in
14 negotiating contracts with the manufacturers
15 for prescription opiates?

16 A. No, I would not.

17 Q. Would you have the discretion
18 to approve a price?

19 A. Yes.

20 Q. Did you have to check with
21 anybody in doing that?

22 A. I did not.

23 Q. In doing the pricing -- strike
24 that.

25 When a new price was offered

1 for a prescription opiate, would you look at
2 how that pricing affected Walmart's bottom
3 line?

4 MS. FUMERTON: Objection, form.

5 A. I would not.

6 BY MR. BOWER:

7 Q. What would you look at when you
8 received the new price, if anything?

9 MS. FUMERTON: Objection, form.

10 A. We would look at the current
11 pricing, and then we would take other factors
12 into accountability; is the current supplier
13 supplying without any issue, what's the
14 history with the supplier that's bringing the
15 pricing proposal to you and things like that.

16 BY MR. BOWER:

17 Q. Would you consider whether
18 Walmart would make more money under the new
19 price?

20 MS. FUMERTON: Objection, form.

21 A. Anytime we received a lower
22 price, we knew that we would be making more
23 money as far as decreasing our cost of goods.

24 BY MR. BOWER:

25 Q. So in other words, would

1 Walmart reduce the price that was paid for
2 the product commensurate with its price
3 reduction received from manufacturers?

4 MS. FUMERTON: Objection, form.

5 MR. BOWER: I'll strike that.

6 BY MR. BOWER:

7 Q. Was the price that Walmart paid
8 for prescription opiates -- strike that.
9 I'll try to ask a proper question.

10 Did the price that Walmart paid
11 manufacturers of prescription opiates impact
12 the price that Walmart sold the product for?

13 MS. FUMERTON: Objection, form.

14 A. It did not. It did not.

15 (Walmart-Little Exhibit 13
16 marked.)

17 BY MR. BOWER:

18 Q. I'll hand you what's been
19 marked as Exhibit 13. Just take a moment and
20 review that document. Again, this is another
21 document that was redacted up until the point
22 that you're included on the e-mail chain,
23 okay? Just in case you're wondering why
24 those redactions are there.

25 (Document review.)

1 BY MR. BOWER:

2 Q. Are you finished reviewing the
3 document?

4 A. Yes.

5 Q. Okay. My first question is
6 whether anyone on this e-mail chain was in
7 replenishment.

8 A. Yes, they were.

9 Q. Okay. And who would that be?

10 A. Rachel Galdamez and David
11 Storms.

12 Q. Okay. And I don't want to ask
13 about all the people on here, but do you know
14 whether all the people on the "To" line were
15 Walmart folks? Or if you recognize any names
16 that were not Walmart folks, just let us
17 know.

18 A. I'm not familiar with Jason
19 K-O-P-F.

20 Q. Okay. But everyone else on
21 that, to the best of your knowledge, was a
22 Walmart employee?

23 A. Yes.

24 Q. Okay. Do you -- Ken S-A-S-S-E,
25 what position did he hold, if you know?

1 A. Ken Sasse?

2 Q. Uh-huh.

3 A. Was a divisional operator for
4 pharmacy operations.

5 Q. Do you have knowledge of what
6 his responsibilities were with respect to
7 prescription opiates?

8 MS. FUMERTON: Objection, form.

9 A. A divisional operator, the
10 hierarchy for operations management would be
11 a pharmacist, a pharmacy manager, a market
12 director, a regional director, and then a
13 divisional.

14 BY MR. BOWER:

15 Q. Okay. Thank you.

16 What about Phil Reynolds Jr.?

17 A. He was a divisional operator
18 for pharmacy operations.

19 Q. So same title as Ken?

20 A. Yes.

21 Q. Okay. Tim K-O-C-H?

22 A. Tim -- I don't remember his
23 title at the time. It's usually in
24 regulatory or compliance.

25 Q. Okay. Greg Beam?

1 A. Greg Beam was in asset
2 protection.

3 Q. What did -- did you have any --
4 strike that.

5 In connection with your
6 responsibilities as a buyer of prescription
7 opioids, did you have any interaction with
8 Mr. Beam?

9 A. There were times that we -- we
10 crossed paths or were in meetings together,
11 yes.

12 Q. And under what circumstances
13 would that happen?

14 MS. FUMERTON: Objection, form.
15 BY MR. BOWER:

16 Q. I'm asking specifically with
17 respect to prescription opiates.

18 MS. FUMERTON: Objection, form.

19 A. The majority of the
20 conversations I had with him around
21 prescription opioids were if manufacturers
22 came to us with a program that they wanted to
23 implement.

24 Purdue would bring to us a
25 program about -- I don't know, it's a -- it

1 would be a customer-facing program around
2 opioids, I would pass that to Greg Beam.

3 BY MR. BOWER:

4 Q. Okay. And what would be an
5 example of a customer-facing program around
6 opioids? What does that mean?

7 A. I can't remember any that they
8 brought us. They were generally around
9 safety, know your medications or things like
10 that, from what I can recall.

11 Q. And would Walmart provide that
12 information to its customers?

13 MS. FUMERTON: Objection, form.

14 A. I'm not sure what happened
15 after I passed the -- made the contact
16 between the two.

17 BY MR. BOWER:

18 Q. So you would make a contact
19 between Purdue and Mr. Beam?

20 A. Greg Beam, yes.

21 Q. Greg Beam. And you don't know
22 what Mr. Beam would do with that after that;
23 is that correct?

24 A. That's correct.

25 Q. We would have to ask Mr. Beam

1 that, right?

2 MS. FUMERTON: Objection, form.

3 A. Yes.

4 (Interruption by the
5 videographer.)

6 MS. FUMERTON: Can folks on the
7 line hear us?

8 MR. INNES: Yes, this is
9 Michael Innes. I had you on mute and
10 I can hear you.

11 MS. FUMERTON: Okay. Thanks.

12 BY MR. BOWER:

13 Q. Jamie Newel?

14 A. Jamie Newel, he was an
15 operations coordinator, I believe, at this
16 time.

17 Q. Based on your experience as a
18 buyer of prescription opiates, when would you
19 have occasion to interact with the operations
20 coordinator?

21 MS. FUMERTON: Objection, form.

22 A. So we would interact with the
23 operation coordinator multiple times a week
24 just on our business as a whole. I can't --
25 I don't know as far as with prescription

1 opioids.

2 BY MR. BOWER:

3 Q. Okay. Just generally speaking,
4 what role did the operations coordinator
5 perform?

6 A. The operations coordinator was
7 a conduit between the home office and
8 operations management in the field.

9 Q. Okay. And can you be any more
10 specific, what you mean by operations
11 management in the field? Are you referring
12 to pharmacists or something else?

13 A. Pharmacy operations at the home
14 office and pharmacy operations at store
15 level.

16 Q. So what does an operations
17 manager do just based on your experience?

18 MS. FUMERTON: Objection, form.

19 A. I'm not sure of their whole job
20 duties. They produced the COMAC for Friday,
21 and would send the COMAC out that we talked
22 about on Fridays.

23 BY MR. BOWER:

24 Q. And those COMACs are
25 distributed to all Walmart pharmacies?

1 A. Yes, it's an electronic
2 document.

3 Q. Okay. And what type of
4 information, just generally speaking, is
5 included in that distribution?

6 A. Any messages that the home
7 office wants to relay to the field. And
8 I'm -- my position wasn't in the operations
9 department, so I'm not as familiar with that
10 information.

11 Q. Okay.

12 A. If I had any information that I
13 wanted to communicate to the stores, I would
14 use that vehicle.

15 Q. And were you copied on those
16 distributions?

17 A. I was sometimes, not always.

18 Q. Okay. And do you know whether
19 anyone at the home office was copied on those
20 distributions?

21 MS. FUMERTON: Objection, form.

22 A. I don't know.

23 BY MR. BOWER:

24 Q. Were you based in the home
25 office when you were in Bentonville?

1 A. Yes, I was.

2 Q. Do you know who sent out the
3 COMAC?

4 A. It came from an operations
5 coordinator e-mail.

6 Q. Is there kind of like just a
7 general e-mail address for operations
8 coordinator that was used, or is it
9 associated with somebody's name?

10 A. I don't remember.

11 Q. Okay. So let's then turn to
12 the substance of the e-mail, okay?

13 A. Uh-huh. Yes.

14 Q. Were you in a meeting with
15 Thomas Hervey, H-E-R-V-E-Y, discussing the
16 oxy 30 and 15mg C-II issue?

17 A. I don't remember being in the
18 meeting.

19 Q. Okay. Do you recall reading
20 this e-mail, just generally what the issue
21 was?

22 A. I have a recollection of what
23 the issue was.

24 Q. Okay. What's your
25 recollection?

1 A. There was some sort of an
2 instance where systematically stores were
3 receiving products that had not ordered on
4 the oxy, the 30 and 15.

5 Q. Okay. And in connection with
6 this issue, it appears that Walmart looked at
7 how much McKesson had sent to the stores; is
8 that correct? You see maybe in the third
9 sentence?

10 A. Yes.

11 Q. Okay. You see it says --

12 A. Yes, they did.

13 Q. -- the warehouse and McKesson
14 have sent out a total of 23,321 bottles of
15 the 15 and 30 combined.

16 Do you see that?

17 A. I do.

18 Q. Where would you look if you
19 wanted to see how much oxy McKesson had sent
20 to the stores? Would that be in Retail Link
21 as well?

22 A. Typically, I would call
23 McKesson and ask McKesson for that data.

24 Q. Okay. That's not data you had
25 access to; is that correct?

1 A. Correct.

2 Q. Okay.

3 A. Now, I could back into that
4 information from some data I have, but I
5 would have to do some analytics to do that.

6 Q. How would you do that?

7 A. In Retail Link we would have
8 total sales out, and then I could look at
9 what came out of the warehouse and make an
10 assumption on the remainder.

11 Q. Okay. I see. You just take
12 this whole amount from Retail Link and
13 subtract the amount from the warehouse and
14 you get the remainder?

15 A. (Nods head.)

16 Q. Thank you for that.

17 In Retail Link can you
18 determine how much was sold by any individual
19 pharmacy?

20 MS. FUMERTON: Objection to
21 form.

22 A. You could filter down to a
23 specific store.

24 BY MR. BOWER:

25 Q. Okay. And as you sit here

1 today, do you recall how long Retail Link
2 would maintain the -- that sale information,
3 in other words, how far back you could go?

4 A. I think you could go 23 months
5 in Retail Link.

6 Q. Okay. And Thomas Hervey, it
7 says here he was logistics operations
8 coordinator of pharmacy.

9 Do you have any knowledge as to
10 how that position differs from operations
11 coordinator?

12 A. The logistic operations
13 coordinator would be over the pharmacy
14 distribution centers.

15 Q. So let's go up to the first
16 line of this e-mail. It says: Coming out of
17 the meeting last Wednesday there were some
18 concerns that the information needed to be
19 scrubbed to ensure accuracy of hands and --
20 of on-hands in the stores.

21 Do you see that?

22 A. I do.

23 Q. What does that refer to?

24 A. I don't remember being at the
25 meeting. Just reading that statement, I

1 would think they were looking at some
2 on-hands, but they weren't sure if those were
3 accurate.

4 Q. So in other words, if they
5 couldn't confirm they were accurate, they
6 would just scrub the information, correct?

7 MS. FUMERTON: Objection, form.

8 A. I think scrub means that they
9 would do some investigating to try to -- to
10 try to back up those numbers to make sure
11 they were accurate.

12 BY MR. BOWER:

13 Q. So scrubbed in your mind means
14 investigating?

15 A. It would need to be looked at,
16 investigated, have some -- I want to say
17 proven. You know, they had to be proven what
18 they were, if they were accurate or not.

19 Q. Okay. And who would have done
20 those investigations? Who would have had
21 that responsibility?

22 A. I'm not sure where the
23 responsibility would lie. In this instance,
24 if I wanted to ensure an on-hand, I would
25 call the store and ask them to count their

1 inventory.

2 Q. But here we're talking about
3 on-hand, it appears to be in the stores
4 nationwide, right?

5 MS. FUMERTON: Objection, form.

6 A. Yes.

7 BY MR. BOWER:

8 Q. So is it your understanding
9 that there was a nationwide investigation to
10 determine where the missing inventory was?

11 MS. FUMERTON: Objection, form.

12 A. I'm not sure if this is about
13 missing inventory or just about how much
14 product was shipped out from the distribution
15 center and locating that product.

16 BY MR. BOWER:

17 Q. Right. Okay. I appreciate
18 that clarification.

19 It says, actually, that the
20 stores have 23,155 on hand, which is 28,032
21 [sic] more than we sent them, right?

22 A. That's what it says, yes.

23 Q. So the investigation would have
24 focused on that discrepancy?

25 MS. FUMERTON: Objection, form.

1 A. Yes, trying to understand do
2 they really have the 23,321 bottles or do
3 they have the 26,000, which is showing up in
4 on-hands.

5 BY MR. BOWER:

6 Q. Right. And do you know who
7 would know who would have conducted that
8 investigation? I'm just trying to figure out
9 who would have done that.

10 A. I do not know.

11 Q. Okay. Do you know who I could
12 talk to to answer that question?

13 A. I don't know.

14 Q. In other words, do you think
15 anyone -- any of the folks on this e-mail
16 would know the answer to that question?

17 A. I would think someone would.

18 Q. Who would you think would be
19 most likely to know who would conduct such an
20 investigation?

21 MS. FUMERTON: Objection, form.

22 And, Zach, the numbers --

23 MR. BOWER: Can you just let
24 her answer the question first and then
25 you can make your statement.

1 MS. FUMERTON: Well, if you
2 would read it accurately, it would
3 make it a lot more helpful.

4 MR. BOWER: Well, the document
5 is what it is, right?

6 MS. FUMERTON: Then the
7 testimony gets all screwed up because
8 you're asking questions on numbers
9 that don't match with what the
10 document says.

11 MR. BOWER: So why don't we let
12 her answer the question. Then you can
13 make any statements you want for the
14 record, okay?

15 A. I think you could ask the
16 operation coordinators or operations.

17 BY MR. BOWER:

18 Q. Okay. So maybe Mister -- I'm
19 sorry. You said operations coordinator, so
20 that would be Ms. Jamie Newel. Or who in
21 operations are you referring to?

22 A. Jamie Newel or Chris Lykins
23 were both operations coordinators.

24 Q. Okay. So we'd have to talk to
25 them to get the answer to this question?

1 MS. FUMERTON: Objection, form.

2 BY MR. BOWER:

3 Q. I'm just trying -- there's a
4 few people on here. You're telling me the
5 investigation was done, but you don't know
6 who may have done it or what was done. I'm
7 just trying to understand what happened.

8 MS. FUMERTON: Object --

9 BY MR. BOWER:

10 Q. I'm asking you if you can
11 provide information as to who might know the
12 answer to that question.

13 MS. FUMERTON: Objection, form.

14 A. I think one of those two might.

15 BY MR. BOWER:

16 Q. Okay. Thank you.

17 A. I think they would have to be
18 involved in that.

19 Q. Okay. Thank you.

20 MR. BOWER: Tara, did you want
21 to make a statement?

22 MS. FUMERTON: Yeah, I just
23 want to make a statement that the
24 numbers I think got transposed when
25 you were reading them and it did

1 not -- the questions did not reflect
2 accurately the numbers that were on
3 hand, the numbers that were shipped
4 and the numbers that -- the difference
5 between the two.

6 MR. BOWER: Okay.

7 BY MR. BOWER:

8 Q. And then I think this will be
9 my last question on this one. Why are you
10 forwarding this information to Steve Cohen?

11 A. I can't remember.

12 Q. Do you have any -- as you sit
13 here today, any -- can you think of any
14 reason why Mr. Cohen would have been
15 concerned with this issue?

16 MR. CIULLO: Objection,
17 foundation.

18 A. The only -- the only thing I
19 can think of is if I was trying to relay
20 the -- what happened to see if I could return
21 some of the product, is the only thing I can
22 think of.

23 BY MR. BOWER:

24 Q. Okay. Thank you. You can put
25 that one away.

1 Just generally speaking, at
2 Walmart -- when you were going to buy a
3 product that had not been previously
4 distributed by Walmart, what was the process
5 or procedure?

6 A. If I was going to buy a
7 product? So generally that was with a brand
8 manufacturer, they would bring information to
9 us regarding what the brand was, the name of
10 the brand, what the brand was for, ZIP codes
11 where they would be marketing that brand to
12 physicians, copay tier informations for
13 third-party customers, estimated annual
14 script volume that -- for them, for that
15 year.

16 And I'm referring to opioids
17 and nonopioids when I say that.

18 Q. Okay. I appreciate that. I
19 just want to go through each of those, so let
20 me just make some notes so I can go through
21 each of those. I'd like to go through those
22 in more detail in a minute.

23 Was there any -- on the
24 internal Walmart side, was there any approval
25 you had to get before purchasing a product

1 for the first time?

2 A. No.

3 MS. FUMERTON: Objection, form.

4 A. No.

5 BY MR. BOWER:

6 Q. All right. Let's walk through
7 those criteria in a little more detail, if
8 you don't mind, okay?

9 The first thing you think that
10 you considered was the brand or what it was
11 to be used for, correct?

12 A. Correct.

13 Q. Can you just describe in a
14 little more detail what that means?

15 A. So if a manufacturer was
16 bringing us a new drug, I would have to
17 understand what the disease state was for and
18 look at what the prescriptions in that
19 disease state are doing.

20 Q. So what disease states would
21 you have considered for prescription opiates?

22 MS. FUMERTON: Objection, form.

23 A. Well, we would look at just the
24 pain -- on the prescription opioids, if I
25 remember correctly, most of those were

1 generic, so the brand was already in the
2 market. So I only had to look at utilization
3 on that brand product.

4 BY MR. BOWER:

5 Q. And then the next thing you
6 mentioned was ZIP codes for marketing to
7 physicians. Why would that be a
8 consideration for you?

9 MS. FUMERTON: Objection, form.

10 A. So with a new brand product
11 that wasn't out there, we had to understand
12 where the information -- what doctors were
13 going to be writing that product so we could
14 ensure we had product in those ZIP code areas
15 so when a prescription came in, they would be
16 there.

17 That's, again, for brand
18 products, for products that weren't
19 previously in the market.

20 BY MR. BOWER:

21 Q. There were -- Walmart did sell
22 brand products that were prescription
23 opiates, correct?

24 A. Yes, we did.

25 Q. And what was the reason for

1 looking at this marketing information?

2 MS. FUMERTON: Objection, form.

3 A. So that we could understand

4 where our business was going to be.

5 Especially if the utilization on the product

6 was low, we may not warehouse the item. If

7 the utilization was high, then we would make

8 decisions on whether we were going to

9 warehouse.

10 If it's a new product, you

11 don't expect -- depending on what they

12 estimate their script volume is going to be

13 for the year, you don't want to necessarily

14 put it in 5,000 stores if there's only going

15 to be a subset of GI specialty doctors that

16 are writing that prescription in certain

17 subsets of the country.

18 BY MR. BOWER:

19 Q. So in other words, Walmart

20 wanted to know how popular a product was

21 going to be before committing to purchasing

22 it, correct?

23 MS. FUMERTON: Objection, form.

24 A. We wanted to understand what

25 our estimated utilization would be before we

1 made decisions on what stores to stock the
2 product in.

3 BY MR. BOWER:

4 Q. And as part of that estimated
5 utilization, would you look at the efforts
6 that the manufacturer was putting towards
7 marketing the product, correct?

8 MS. FUMERTON: Objection, form.

9 A. On new brand launches, yes, we
10 would look at that. And I'm referring to
11 opioids and nonopioids at the time.

12 BY MR. BOWER:

13 Q. And on the Walmart side, who
14 was part of creating those estimated numbers?

15 A. Those numbers wouldn't be
16 created on the Walmart side. The
17 manufacturer would come to us with what their
18 estimated yearly script volume would be for
19 the entire market.

20 Q. And would Walmart then rely on
21 those numbers, or would it do its own
22 estimation based on all the information it
23 had available?

24 MS. FUMERTON: Objection, form.

25 A. I would -- I would take that

1 number and I would extrapolate what I
2 expected my market share to be and make
3 decisions based off of that.

4 BY MR. BOWER:

5 Q. And what information would you
6 use to extrapolate what you expected your
7 market share to be?

8 A. We used a base number that we
9 thought was our market share.

10 Q. And do you recall what the base
11 number was?

12 A. It was around 10%.

13 Q. That would be for prescription
14 opiates and for other drugs as well, correct?

15 MS. FUMERTON: Objection, form.

16 A. That was an average market
17 share across the entire department.

18 BY MR. BOWER:

19 Q. So that market share, you would
20 use that market share for prescription
21 opiates, correct?

22 MS. FUMERTON: Objection, form.

23 A. If there was a new brand launch
24 of a prescription opioid, I would have used
25 that 10% market share number, yes.

1 BY MR. BOWER:

2 Q. Thank you.

3 (Walmart-Little Exhibit 14
4 marked.)

5 BY MR. BOWER:

6 Q. Okay. You've been handed
7 what's been marked as Exhibit 14. I tried to
8 include all the attachments. It's a Walmart
9 document and I believe it's sequential. I
10 don't have too many questions on the
11 attachments, but I just included them so you
12 could review them if you would like.

13 But my main question, just so
14 you can keep it in mind as you're looking at
15 the document, is your e-mail here, where you
16 state that, for later, these new item sheets
17 have not approved yet. I just want to get an
18 understanding what that means.

19 So with that in mind, take your
20 time and review the document.

21 A. Thank you.

22 MR. BOWER: Sorry, and the
23 Bates number begins with
24 WMT_MDL_000021669, and it goes through
25 21678.

1 (Document review.)

2 BY MR. BOWER:

3 Q. Are you still reading the
4 document?

5 A. I am finished.

6 Q. Okay. So what did you mean
7 when you wrote these new item sheets are not
8 approved yet?

9 A. There was a -- and I'm not
10 remembering exactly. There was a time when
11 we started sending our new item sheets to
12 compliance to look over the NDCs to make sure
13 that they -- the manufacturer had licenses in
14 the states that we had warehouses, and I'm --
15 I think that is what I meant here, that I
16 hadn't gotten the word back from compliance
17 that they were through with their review.

18 Q. So you couldn't -- was it --
19 strike that.

20 Did you have to wait for
21 compliance to finish their review to purchase
22 product?

23 A. I could go ahead and create the
24 item sheets. Replenishment could not place a
25 purchase order until we had that review from

1 compliance.

2 Q. Do you recall when compliance
3 started doing that review?

4 A. I don't remember.

5 Q. Do you recall whether -- strike
6 that.

7 Do you recall them ending that
8 policy?

9 MS. FUMERTON: Objection, form.

10 A. I do not recall them ending
11 that policy, no.

12 BY MR. BOWER:

13 Q. Okay. So would it be your
14 expectation that at least as of October 2015,
15 that policy was in place and would have
16 continued through 2017?

17 A. Yes, that is accurate.

18 Q. Do you know who specifically in
19 compliance was responsible for reviewing
20 prescription opiate products?

21 MS. FUMERTON: Objection, form.

22 MR. BOWER: Strike that.

23 BY MR. BOWER:

24 Q. Do you know if anyone in
25 compliance had specific responsibility for

1 reviewing prescription opioid products?

2 MS. FUMERTON: Objection, form.

3 A. So we sent over the new item
4 sheets to compliance for opioid and nonopioid
5 products, and they all went to Dadrion
6 Gaston's team.

7 BY MR. BOWER:

8 Q. You said Dadrion Gaston. Do
9 you know the spelling of the last name?

10 A. G-A-S-T-O-N.

11 Q. And is that, to the best of
12 your knowledge, the e-mail address reflected
13 here, it says "emailpharmacyos"?

14 A. No, "emailpharmacyos" was the
15 order specialists. That was a division of
16 replenishment that actually created the items
17 after we filled out the form.

18 Q. Okay. So you're e-mailing them
19 to alert them that these aren't approved yet?

20 A. Correct.

21 Q. Okay. And then just following
22 down the e-mail chain, it starts with you
23 sending an e-mail to Jocelyn Baker.

24 Do you see that?

25 A. Uh-huh.

1 Q. And she was at Teva?

2 A. Yes, I do.

3 Q. And you're asking her for the
4 paperwork for the product, correct?

5 A. Correct.

6 Q. And you needed that paperwork
7 so that it could be submitted for approval,
8 correct?

9 A. Correct.

10 Q. Okay. At this point, were you
11 aware that OxyContin was being abused across
12 the country?

13 MS. FUMERTON: Objection, form.

14 A. I was aware that people that
15 had prescriptions for pain medicine sometimes
16 used those for ways other than they were
17 prescribed, yes.

18 BY MR. BOWER:

19 Q. And specifically OxyContin,
20 correct?

21 MS. FUMERTON: Objection, form.

22 MR. BOWER: I'll strike that.

23 BY MR. BOWER:

24 Q. Did you have that specific
25 understanding with respect to OxyContin, or

1 not?

2 MS. FUMERTON: Objection, form.

3 A. I had the understanding for all
4 C-II products.

5 BY MR. BOWER:

6 Q. Well, let me direct your
7 attention then to Bates -- it's a few pages
8 into the document ending in Bates number 673.

9 You see that page?

10 A. 673, yes.

11 Q. Yes. And then it has a section
12 here that Walmart received regarding
13 postmarketing requirements under 505(o).

14 Do you see that?

15 A. I see that.

16 Q. Okay. Do you see that it
17 mentions the known serious risks of the
18 OxyContin tablets? Do you see that?

19 MS. FUMERTON: Objection, form.

20 Are you reading -- what portion are
21 you reading?

22 BY MR. BOWER:

23 Q. So you if look under the
24 postmarketing requirements, it says -- I can
25 read the whole sentence in the record if

1 you'd like.

2 MS. FUMERTON: Sure.

3 BY MR. BOWER:

4 Q. Okay. It says: As you were
5 informed in our December 30, 2009 Complete
6 Response Letter, FDA has determined that you
7 are required to conduct postmarketing studies
8 of OxyContin (oxycodone hydrochloride
9 controlled release) tablets to assess the
10 known serious risks of OxyContin tablets, in
11 particular, whether the changes made to the
12 OxyContin (oxycodone hydrochloride controlled
13 release) tablets formulation that are the
14 subject of this application and which are
15 intended to deter misuse and abuse actually
16 result in a decrease in the risks of misuse
17 and abuse, and their consequences.

18 Do you see that?

19 A. Yes.

20 Q. Does that inform or refresh
21 your recollection that you knew at this time
22 whether this product was subject -- this
23 specific product was subject to abuse?

24 MS. FUMERTON: Objection, form.

25 A. I did not read this document

1 when Jocelyn sent this over. I used this to
2 forward to Dadrion to ensure that the NDC was
3 approved by the manufacturer, which is what
4 compliance was doing when looking at the
5 licenses and the NDCs.

6 BY MR. BOWER:

7 Q. So Walmart didn't require you
8 to review this document, so you didn't review
9 it, correct?

10 MS. FUMERTON: Objection, form.

11 A. I did not review this document.

12 BY MR. BOWER:

13 Q. You could have reviewed it,
14 right?

15 A. Yes, I could have reviewed it.

16 Q. Did you ever ask or contact
17 Purdue whether it fulfilled this requirement?

18 A. I'm sorry?

19 Q. I'm sorry, Teva, whether it
20 fulfilled this requirement?

21 MS. FUMERTON: Objection, form.

22 A. Could you repeat that?

23 BY MR. BOWER:

24 Q. Yes.

25 The paragraph we just read is a

1 postmarketing requirement under 505(o). Do
2 you see that? They're required to do certain
3 things.

4 Do you see that?

5 A. I see that.

6 Q. Did you ever follow up with
7 them to determine whether they did those
8 things?

9 MS. FUMERTON: Objection, form.

10 A. I did not ask Teva.

11 BY MR. BOWER:

12 Q. Do you know if anyone at
13 Walmart ever did?

14 MS. FUMERTON: Objection, form.

15 A. Not that I'm aware of.

16 BY MR. BOWER:

17 Q. Do you know who would have done
18 so if it, in fact, had happened?

19 MS. FUMERTON: Objection, form.

20 A. I do not know.

21 BY MR. BOWER:

22 Q. Do you know who at Walmart
23 would have had those types of
24 responsibilities to follow up with
25 manufacturers on these types of issues?

1 MS. FUMERTON: Objection, form.

2 A. We had different departments in
3 regulatory and in compliance. I would have
4 to think it was one of those departments.

5 BY MR. BOWER:

6 Q. Okay. Anyone in particular
7 that comes to mind in those departments that
8 would have had this kind of responsibility?

9 MS. FUMERTON: Objection, form,
10 lack of foundation.

11 A. They had multiple people that
12 were in those departments that did different
13 things. I don't know.

14 BY MR. BOWER:

15 Q. Okay.

16 (Walmart-Little Exhibit 15
17 marked.)

18 BY MR. BOWER:

19 Q. So you've been handed what's
20 marked as Exhibit 15. Just take a moment and
21 review that. I believe it is the
22 corresponding approval for these products,
23 but that's going to be my initial
24 questioning. So just take a moment and
25 review the document.

1 MR. CIULLO: While she's
2 reviewing, can you please read the
3 Bates.

4 MR. BOWER: Sure. It starts
5 with WMT_MDL_000021921, and it ends in
6 21924.

7 MR. CIULLO: Thank you very
8 much.

9 (Document review.)

10 BY MR. BOWER:

11 Q. Are you done?

12 A. I'm done.

13 Q. Is it your understanding that
14 this is the actual approval for this product?

15 MS. FUMERTON: Objection, form.

16 A. Yes.

17 BY MR. BOWER:

18 Q. Okay. And do you recall
19 sending this part to Cristy Martin -- this
20 e-mail to Cristy Martin?

21 A. Cristy Martin was on Dadrion's
22 team, so she would have been one of those in
23 that group.

24 Q. Okay. Anyone else in that
25 group that you recall sending this to?

1 A. Just looking at the bottom
2 e-mail, it looks like I only sent it to
3 Cristy.

4 Q. Okay. Do you have any
5 familiarity with H&W Product Safety's
6 policies and procedures?

7 A. I do not.

8 Q. Okay. Would we have to ask
9 Cristy what those were?

10 MS. FUMERTON: Objection, form.

11 A. Cristy or Dadrion.

12 BY MR. BOWER:

13 Q. Do you have any knowledge or
14 understanding as to what standards they used
15 to provisionally approve these products?

16 A. I do not.

17 Q. Do you know -- you know, if you
18 look at the second full sentence, it says:
19 Additional information has been/will be
20 requested from the supplier for verification.

21 Do you see that?

22 A. I see that.

23 Q. Do you know who would have done
24 that additional -- made those additional
25 requests?

1 A. It would have been someone on
2 Dadrion's team.

3 Q. Okay. Not you, not yourself,
4 correct?

5 A. No.

6 Q. Okay. And then next, Cristy
7 goes on to state: Continuation of business
8 is subject to the receipt of this additional
9 information from the supplier.

10 Do you see that?

11 A. I do.

12 Q. Did you -- do you recall ever
13 receiving any follow-up from Cristy regarding
14 these products?

15 A. I don't remember receiving
16 anything.

17 Q. So it would be your assumption,
18 then, that she received the information and
19 the business continued, correct?

20 MS. FUMERTON: Objection, form.

21 A. Yes.

22 BY MR. BOWER:

23 Q. Do you have any understanding
24 as to what additional information would have
25 been requested?

1 A. I don't see any of that
2 information here, so I do not remember.

3 Q. What is a launch binder?

4 A. What is a launch binder? I'm
5 not sure that I know.

6 Q. Has any manufacturer ever sent
7 you a launch binder for any products?

8 MS. FUMERTON: Objection, form,
9 lack of foundation.

10 A. Not that I'm aware of. I'm not
11 familiar with that term.

12 BY MR. BOWER:

13 Q. Okay.

14 (Walmart-Little Exhibit 16
15 marked.)

16 BY MR. BOWER:

17 Q. You've been handed what's been
18 marked as Exhibit 16, an e-mail from LouAnn
19 Randall at one of the manufacturers to
20 yourself.

21 MR. BOWER: I will note for the
22 record, Tara, that this does not
23 include all the attachments, just the
24 e-mail. Trying to save some trees.

25 MS. FUMERTON: Okay.

1 BY MR. BOWER:

2 Q. And just take a minute to
3 review the document. I just have a few
4 questions. I'm wondering first whether this
5 refreshes your recollection of whether you've
6 ever received a launch binder.

7 (Document review.)

8 BY MR. BOWER:

9 Q. Are you finished reading the
10 document?

11 A. I am.

12 Q. Okay. So my first question:
13 Does this refresh your recollection of what
14 may be referred to as a launch binder?

15 A. I still have no idea what that
16 term means.

17 Q. Okay. That's fair.

18 So then let's focus on the
19 e-mail at the bottom of the first page, your
20 e-mail to Dave Irwin. Who is Dave?

21 A. Dave was our account manager at
22 Mallinckrodt.

23 Q. Okay. And you state to him:
24 I'm ready to create fentanyl.

25 Do you see that?

1 A. I do.

2 Q. What does that mean?

3 A. That means they must have
4 launched fentanyl. I was ready to create the
5 Walmart item numbers for that product.

6 Q. And what would you have done to
7 decide that you were ready to create it? In
8 other words, what happened before your
9 decision to create that product?

10 MS. FUMERTON: Objection, form.

11 A. So it could have been a number
12 of instances. Based off of something that we
13 had in one of the earlier exhibits, I think
14 this was a new launch to the market of this
15 generic product, and I'm thinking they must
16 have gotten FDA approval and were ready to
17 launch, and I had time and was ready to
18 create those items at that time.

19 BY MR. BOWER:

20 Q. How would you have known that
21 Walmart had a need or demand for the product?

22 A. There would have been a
23 brand-referenced product that we were already
24 dispensing.

25 Q. Do you know what that

1 brand-referenced -- strike that.

2 Do you know who would have
3 provided that brand-referenced product to
4 Walmart?

5 MS. FUMERTON: Objection, form.

6 A. I don't --

7 THE WITNESS: I'm sorry.

8 A. I don't know who the
9 manufacturer was.

10 BY MR. BOWER:

11 Q. Then following through back to
12 the first e-mail, which appears to be a
13 different -- kind of a different subject,
14 Mr. Irwin is asking you about methadone.

15 Do you see that?

16 A. I see that.

17 Q. Okay. It says: Walmart
18 usually buys around 20,000 bottles a month,
19 but in January it dropped to 12,000 bottles.

20 Do you see that? Did you ever
21 get back to him on that?

22 A. I'm not sure.

23 Q. Did you ever look at Walmart's
24 purchasing with respect to methadone?

25 MS. FUMERTON: Objection, form.

1 A. I'm not sure.

2 BY MR. BOWER:

3 Q. Without a document, you
4 wouldn't be able to tell me one way or the
5 other; is that correct?

6 A. That's correct.

7 Q. Okay. Do you have any
8 understanding as to why Walmart didn't
9 produce this e-mail?

10 MS. FUMERTON: Objection, form.

11 A. I do not know.

12 (Walmart-Little Exhibit 17
13 marked.)

14 BY MR. BOWER:

15 Q. You've been handed what's been
16 marked as Exhibit 17. This is another
17 Mallinckrodt document not produced by
18 Walmart. The Bates number is
19 MNK-T1_0001961218, and again it has the
20 redactions just because you weren't on those
21 e-mails. It's just some e-mail strings here
22 between you and Mr. Irwin again.

23 And take a moment and review
24 this, but my main question is going to be on
25 your -- your question to Dave knowing that

1 you have to do an assessment of the pain
2 management category.

3 Are you ready or do you want
4 some time?

5 A. I'm ready.

6 Q. Okay. Do you know what that
7 refers to?

8 A. There were times that our
9 supervisor would ask us to put together
10 overviews of our categories, and I'm assuming
11 that this was me trying to get some data for
12 the overview of that -- of that presentation
13 I had to do.

14 Q. Okay. So you had to make a
15 presentation to supervisor about the pain
16 management category; is that correct?

17 A. We would have to do this on all
18 of our categories.

19 Q. Okay. So in each category you
20 had to do a presentation, correct?

21 A. Correct.

22 Q. Okay. And who was the
23 supervisor that would have requested this?

24 A. Sandy Kinsey.

25 Q. Okay. And approximately how

1 often would you do these presentations?

2 A. Maybe once a year. I think we
3 did a couple for Sandy. We did one for Mark
4 Phillips.

5 Q. Okay. Would these be
6 PowerPoint presentations or something
7 different?

8 A. Generally, we created
9 PowerPoint decks to go with them.

10 Q. Did you generally work with
11 anyone else on the pain management category?

12 A. I would have reached out to my
13 top suppliers in every category or ones that
14 I knew I had a relationship with that would
15 help supply me with information that I might
16 could use.

17 Q. Okay. And what type of
18 information were you looking for --

19 MS. FUMERTON: Objection, form.

20 BY MR. BOWER:

21 Q. -- with respect specifically to
22 the pain management category?

23 MS. FUMERTON: Objection, form.

24 A. Well, I think with everyone I
25 was looking for any information they might

1 have on market dynamics, new products that
2 may be coming into the market, new generics
3 that I was not aware of, what that pipeline
4 looked like.

5 It really was just a fishing
6 for information of things that I could use to
7 put together for that presentation.

8 BY MR. BOWER:

9 Q. Did the manufacturers generally
10 provide you with information you requested?

11 A. Not generally, no.

12 Q. Did they sometimes provide you
13 with that?

14 A. I could get launch calendars,
15 and that was -- that was the majority of the
16 information I would get from them, what they
17 had coming up in their pipeline.

18 Q. Okay. So if -- if the
19 manufacturers weren't cooperative in
20 providing the information, what information
21 would you use for your presentations?

22 MR. CIULLO: Object to form.

23 MS. FUMERTON: Objection to
24 form.

25 A. We would look at Drugstore News

1 or different current things that were
2 available in the market from a search, a
3 Google search or -- pipeline was the majority
4 of what we were interested in, to -- because
5 that would affect our budgeting and our
6 information for the next year.

7 BY MR. BOWER:

8 Q. And how would the pipeline
9 affect your budgeting for the next year?

10 A. If you had large brands that
11 were going off patent, you would see a sales
12 shift or sales would decline, but your units
13 may increase because different doctors may
14 write the drug if it was a brand and the
15 customer couldn't afford it but now they can.

16 And then you would see a shift
17 in profit. There's more profit on a generic
18 product generally than on a brand product.

19 Q. Were these presentations made
20 at a meeting?

21 A. Just usually it was a meeting
22 of our category group, the buyers and our VP.

23 Q. So what do you mean by category
24 group?

25 A. Just our pharmacy merchandising

1 group of buyers with our supervisor.

2 Q. Okay. So the buyers would meet
3 with the VP, Ms. Kinsey or someone else, and
4 make the presentations?

5 A. Correct.

6 Q. Okay. Do you have any
7 understanding about what Ms. Kinsey would do
8 with the presentations?

9 A. I don't know.

10 Q. Would you provide her copies of
11 the presentations before these meetings?

12 A. I don't -- I don't remember if
13 we sent those prior to the meetings or not.

14 Q. Did you save these
15 presentations anywhere?

16 A. I would think some we did.
17 Some we might not have. I'm not sure.

18 Q. You might have just deleted
19 them after the presentation?

20 A. Sometimes I would print them
21 and get rid of them. I mean, we had a lot of
22 documents. I'm not sure if I saved them all
23 or not.

24 Q. Has anyone asked you in this
25 case whether you've saved any of these

1 presentations or where they might be found?

2 MS. FUMERTON: Objection, form.

3 And I also object to the extent that
4 you're asking a privileged question,
5 so I'm actually going to instruct her
6 not to answer.

7 MR. BOWER: I'm just trying to
8 figure out why Walmart hasn't produced
9 them.

10 BY MR. BOWER:

11 Q. Do you have any understanding
12 why Walmart hasn't produced those
13 presentations?

14 A. I'm not sure what Walmart has
15 produced and what Walmart has not produced.

16 Q. Walmart's never asked you
17 whether they exist, has it?

18 MS. FUMERTON: Objection.

19 Again, I'm going to instruct her not
20 to answer that question because you're
21 asking to potentially invade
22 privileged information.

23 MR. BOWER: It's just a
24 yes-or-no question. She's allowed to
25 answer it.

1 MS. FUMERTON: No, you're not.
2 It's not -- no, actually. You can ask
3 yes-or-no questions that go towards
4 privileged information.

5 MR. BOWER: What privileged
6 information would be called for by
7 that answer, whether you asked her --

8 MS. FUMERTON: To the extent --
9 (Simultaneous discussion
10 interrupted by the reporter.)

11 MS. FUMERTON: To the extent
12 that I've had conversations with her,
13 I don't know that any are implicated
14 here. I'm not saying they are, but
15 it's an inappropriate type of
16 question.

17 MR. BOWER: Are you instructing
18 her not to answer that?

19 MS. FUMERTON: Yes, I did.

20 BY MR. BOWER:

21 Q. Are you going to listen to
22 those instructions?

23 A. I am.

24 Q. Okay. How would Ms. Kinsey
25 inform you that a -- one of these meetings

1 was going to occur?

2 A. She would just tell us in a --
3 you know, whenever we would meet. We would
4 meet with her once every two weeks, and then
5 we also had weekly category group meetings.
6 She would just communicate in one of those.

7 Q. And these regular meetings, did
8 you have meeting agendas?

9 A. Not -- not always. We had a
10 basic system that we would follow, especially
11 if we had our weekly extended team meeting
12 where we would talk about things that were
13 going on in our categories.

14 Q. Okay. So what was just the
15 basic system that you would follow?

16 A. The planners would give an
17 update on financials, business analytics or
18 planners would give any additional
19 information or things that were going on,
20 were they working on budgeting, what were
21 they doing at that time for that week. Each
22 buyer would talk about what was going on in
23 their category for that week, what they were
24 doing that week. Replenishment had an
25 opportunity to speak, the order specialists

1 had time that they could speak.

2 Sometimes there were other
3 people in the meeting. It varied from week
4 to week.

5 Q. Were there notes of these
6 meetings kept, do you know?

7 A. No.

8 Q. There were not?

9 A. No.

10 Q. Walmart -- you had these weekly
11 meetings and there was no record of them?

12 MS. FUMERTON: Objection, form.

13 A. We could take our own
14 individual notes if we needed to, if it was
15 something -- or notes that we had prepared
16 for the meeting, but there was -- there was
17 no -- it was not a formal-type meeting. It
18 was a department get-together meeting.

19 BY MR. BOWER:

20 Q. So that you had these
21 department get-together meetings on a weekly
22 basis, correct?

23 A. Yes.

24 Q. Okay. And there was no written
25 record of those meetings; is that correct?

1 MS. FUMERTON: Objection, form.

2 A. That's correct.

3 THE WITNESS: Oh, sorry.

4 MR. BOWER: I'll strike that.

5 BY MR. BOWER:

6 Q. Was there any written record of
7 those meetings?

8 MS. FUMERTON: Objection, form.

9 A. Not that I'm aware of.

10 BY MR. BOWER:

11 Q. Do you know -- strike that.

12 Do you recall anyone taking
13 notes at those meetings?

14 A. We would all take our own
15 individual notes. I know I took notes. I'm
16 assuming others did. I wasn't looking to see
17 if they were or not.

18 Q. Okay.

19 MR. BOWER: You want to keep
20 going or do you want to take a break?

21 MS. FUMERTON: Let's take a
22 break.

23 MR. BOWER: Okay.

24 THE VIDEOGRAPHER: Going off
25 the record, 1:45 p.m.

1 (Recess taken, 1:45 p.m. to
2 2:09 p.m.)

3 THE VIDEOGRAPHER: Back on
4 record at 2:09 p.m.

5 BY MR. BOWER:

6 Q. We're back on the record. Do
7 you understand you're still under oath?

8 A. I do.

9 Q. Okay. Does the name Darren
10 Townzen ring a bell to you?

11 A. Yes, it does.

12 Q. How are you familiar with
13 Darren?

14 A. Darren is an associate at
15 Walmart in the pharmacy department.

16 Q. Okay. What is his role?

17 MS. FUMERTON: Objection, form.

18 BY MR. BOWER:

19 Q. What is his title?

20 A. I don't know his exact title.
21 He works with systems and ISD and things like
22 that.

23 Q. Do you know if he works on
24 anything related to the distribution of
25 prescription opiates?

1 MS. FUMERTON: Objection, form.

2 A. So he works in pharmacy, so I
3 would have to make an assumption that he does
4 things with opioids as well as our other
5 products.

6 BY MR. BOWER:

7 Q. Okay. What about a person
8 named Arvinder Singh, S-I-N-G-H?

9 A. Arvinder Singh, I'm not
10 familiar with that name.

11 Q. No?

12 A. No.

13 Q. ZAS Management Systems LLC?

14 A. I'm not familiar with that.

15 Q. Okay.

16 (Walmart-Little Exhibit 18
17 marked.)

18 BY MR. BOWER:

19 Q. You've been handed what's been
20 marked as Exhibit 18. Again, it's a document
21 produced by an entity other than Walmart, and
22 its Bates number is PPLPC, and then
23 004000325237. And again, this one has
24 redactions on it just reflecting the fact
25 that you weren't copied on subsequent

1 e-mails, okay?

2 A. Okay.

3 Q. So take a moment to review your
4 document, and then this may refresh your
5 recollection about the gentleman I just asked
6 about.

7 (Document review.)

8 MR. BOWER: Tara, while we're
9 waiting, do you have any understanding
10 as to why Walmart hasn't produced this
11 document?

12 MS. FUMERTON: I don't know
13 whether Walmart has or has not.

14 MR. BOWER: I'm saying it
15 hasn't. Do you know why they haven't?

16 MS. FUMERTON: Well, in my
17 experience, based on things you say we
18 haven't produced, a lot of them we've
19 already produced.

20 MR. BOWER: So are you saying
21 Walmart has produced this?

22 MS. FUMERTON: I think I
23 answered your question, which was I do
24 not know whether Walmart has or has
25 not produced this.

1 MR. BOWER: Would there be a
2 reason that they have not produced
3 this?

4 MS. FUMERTON: There could be.

5 MR. BOWER: What would be that
6 reason?

7 MS. FUMERTON: I'm not taking
8 my deposition today, but if you want
9 to continue to have this discussion on
10 the record, it could be for a variety
11 of reasons.

12 MR. BOWER: Such as?

13 MS. FUMERTON: It didn't exist,
14 it wasn't responsive. I'm not saying
15 any of these. You asked me a
16 hypothetical question. I could ask
17 you hypothetically, I don't even know
18 whether this has or has not been
19 produced, Zach.

20 As I said before, it's my
21 experience in many occasions you send
22 us requests for information that we've
23 already produced and you don't realize
24 that you have it.

25 MR. BOWER: That is absolutely

1 incorrect and you know it.

2 MS. FUMERTON: I know it's
3 absolutely true.

4 MR. BOWER: You can
5 misrepresent the record all you want,
6 but you know that's incorrect, and you
7 know that there's thousands if not
8 hundreds of thousands you are
9 wrongfully withholding.

10 You haven't looked for them.
11 You haven't looked in the proper
12 areas. You haven't produced
13 contracts. There's hundreds of
14 contracts you haven't produced.

15 MS. FUMERTON: I haven't
16 them -- I haven't produced any
17 contracts?

18 MR. BOWER: Not all the
19 contracts, no.

20 MS. FUMERTON: I don't think
21 that's right.

22 MR. BOWER: There's lots of
23 contracts you haven't produced.

24 MS. FUMERTON: Zach, everything
25 you've said basically is false. Why

1 don't we just leave it at that.

2 MR. BOWER: Not true.

3 (Document review.)

4 BY MR. BOWER:

5 Q. Are you still reviewing?

6 A. I am.

7 Q. Okay.

8 (Document review.)

9 BY MR. BOWER:

10 Q. You ready?

11 A. I'm done.

12 Q. Does this refresh your
13 recollection as to Mr. S-I-N-G-H -- I'm not
14 sure how to pronounce his name.

15 A. I don't recall ever looking at
16 this document before.

17 Q. You don't recall receiving this
18 e-mail?

19 A. I don't remember receiving this
20 e-mail.

21 Q. This is an e-mail from
22 May 2012, correct?

23 MS. FUMERTON: Objection, form.

24 MR. BOWER: Sorry, you're
25 objecting to form of a question about

1 the date?

2 MS. FUMERTON: Yep.

3 A. I think Sandy received the
4 e-mail on May 2nd.

5 BY MR. BOWER:

6 Q. Right. Okay. And then you
7 received the e-mail on May 31st, correct?

8 A. That's what it appears here.

9 Q. And you see Mister -- I'm not
10 going to pronounce his name -- Singh writes
11 that he also left you a voicemail, correct?

12 A. I see that, yes.

13 Q. You don't recall ever receiving
14 a voicemail from this gentleman?

15 A. I don't remember receiving a
16 voicemail, no.

17 Q. You see he wants to speak with
18 you regarding an opportunity to partner with
19 Purdue Pharma with the goal of reducing
20 OxyContin abuse in the U.S.

21 Do you see that?

22 A. I see that in this document,
23 yes.

24 Q. Have you ever had a
25 conversation about partnering with Purdue

1 with the goal of reducing OxyContin abuse in
2 the U.S.?

3 A. I don't remember having a
4 conversation, no.

5 Q. Have you ever had any such
6 conversation?

7 MS. FUMERTON: Objection, form.

8 A. I don't remember having those
9 specific conversations.

10 BY MR. BOWER:

11 Q. Well, I'm just -- now, if you
12 go to the first e-mail in the chain from
13 yourself on Friday, June 1st, to Shelton
14 Benson, you say: This is what I was talking
15 about.

16 You see that?

17 A. I see that, yes.

18 Q. You have no recollection of
19 that?

20 A. I don't.

21 Q. This is a time period when the
22 nation was in the middle of an OxyContin
23 crisis, correct?

24 MS. FUMERTON: Objection, form.

25 A. I'm not sure about the dates or

1 the -- or the definition of the crisis, but I
2 was aware at this point that there were
3 people who were using opioids not for their
4 intended purposes.

5 BY MR. BOWER:

6 Q. Were you aware of any companies
7 being -- suffering criminal penalties for the
8 actions taken in connection with the crisis?

9 MS. FUMERTON: Objection, form.

10 A. I know that there were -- there
11 were companies that have had issues with the
12 DEA, yes.

13 BY MR. BOWER:

14 Q. Including Purdue, correct?

15 MS. FUMERTON: Objection, form.

16 BY MR. BOWER:

17 Q. Are you aware whether Purdue
18 had issues with respect to OxyContin?

19 MS. FUMERTON: Objection, form.

20 A. I'm not -- I'm sorry.

21 I'm not aware about Purdue, no.

22 BY MR. BOWER:

23 Q. But here you get an e-mail from
24 this gentleman suggesting that Walmart should
25 partner with Purdue to reduce OxyContin

1 abuse, right?

2 MS. FUMERTON: Objection, form.

3 BY MR. BOWER:

4 Q. That's correct, you received
5 that e-mail, correct?

6 MS. FUMERTON: Objection, form.

7 A. I received the e-mail, yes.

8 BY MR. BOWER:

9 Q. Okay. And if you note -- if
10 you go back a few pages to the page ending in
11 239?

12 A. Yes.

13 Q. He -- this gentleman mentions
14 that he's providing you -- Sandy, his e-mail
15 to Sandy suggests that he's providing another
16 opportunity to partner with the manufacturer.

17 Do you see that?

18 A. I see that, yes.

19 Q. Do you know what that refers
20 to?

21 A. So what exact sentence are you
22 talking about?

23 Q. So, sorry. The page ending in
24 239.

25 A. Yes.

1 Q. The second full paragraph: The
2 purpose of my e-mail today is to provide you
3 with another opportunity to partner with a
4 manufacturer.

5 A. Oh.

6 Q. In this case -- in this case
7 for a program to reduce risk and prevent
8 abuse around a high-profile controlled
9 substance. Purdue Pharmaceuticals is
10 interested in working with Walmart to access
11 852,867, and deidentified prescription data
12 so the distribution of OxyContin can be
13 better monitored.

14 Do you see that?

15 A. I do see that.

16 Q. Did Walmart ever consider doing
17 that on its own?

18 MS. FUMERTON: Objection, form.

19 A. I'm not sure if Walmart did or
20 did not consider doing that on its own.

21 BY MR. BOWER:

22 Q. Are you aware of any
23 conversations regarding Walmart looking at
24 that data to de-identify prescription data to
25 monitor the distribution of OxyContin?

1 MS. FUMERTON: Objection, form.

2 A. If there were conversations, I
3 wouldn't have been involved in conversations
4 regarding EDI data because it was just out of
5 my -- out of my realm.

6 BY MR. BOWER:

7 Q. Okay. Do you know whose realm
8 that would have been in?

9 MS. FUMERTON: Objection, form.

10 A. I know we had an EDI department
11 inside Walmart.

12 BY MR. BOWER:

13 Q. Do you know whether Sandy
14 interacted with that department?

15 A. I do not know.

16 Q. So we'd have to ask her whether
17 she recalls this other opportunity that's
18 referred to?

19 MS. FUMERTON: Objection, form.

20 A. Yes, I'm not aware of this.

21 BY MR. BOWER:

22 Q. Okay. Do you have any
23 knowledge as to what the 852 and 867 refers
24 to?

25 A. I do know that's it's EDI data

1 transmission feeds, but I don't know what
2 each individual feed transmitter --
3 information that is.

4 Q. But Walmart -- you certainly
5 understand that someone at Walmart has access
6 to that information, correct?

7 MS. FUMERTON: Objection, form.

8 A. Yes, I would think that data
9 exists.

10 BY MR. BOWER:

11 Q. Okay. What about the gentleman
12 who Mr. Singh cc's on his initial e-mail to
13 Sandy, Dave J-A-N-C-A? Is that name familiar
14 to you? Sorry, it's on page ending in 238,
15 kind of the bottom there.

16 A. I do not know him.

17 Q. Or Lynn Rankin?

18 A. Lynn Rankin was Sandy's
19 assistant.

20 Q. Okay. So it's apparent that
21 Mr. Singh knows who Sandy's assistant is,
22 correct, because he cc'd her on the e-mail,
23 right?

24 MS. FUMERTON: Objection, form.

25 A. It would appear that way.

1 BY MR. BOWER:

2 Q. So it wouldn't be unusual to
3 expect that Mr. Singh had previously
4 communicated with Sandy in the past, right?

5 MS. FUMERTON: Objection, form.

6 A. I don't know that just knowing
7 her assistant would mean that he had
8 communicated with her in the past. I think
9 people knew our assistants.

10 BY MR. BOWER:

11 Q. How would they know your
12 assistants?

13 MS. FUMERTON: Objection, form.

14 BY MR. BOWER:

15 Q. Well, your testimony is: I
16 think people know our assistants. How would
17 folks outside of Walmart know who your
18 assistants were if they'd never dealt with
19 you in the past?

20 MS. FUMERTON: Objection, form.

21 A. They could ask other suppliers,
22 they could get information from the company.
23 They could get it from publications that
24 could be out there.

25 ///

1 BY MR. BOWER:

2 Q. What sort of publication would
3 disclose who the assistants were for Walmart
4 folks?

5 MS. FUMERTON: Objection, form.

6 A. We would have our contact
7 information on e-mails or in ECRM, NACDS,
8 anybody that had gone to those meetings.

9 BY MR. BOWER:

10 Q. What's ECRM?

11 A. ECRM is a -- it's a meeting
12 that's held. It's not pharmacy specific.
13 It's more retail specific, where you go and
14 meet with vendors and have 20-minute meetings
15 and go through -- they give you contact
16 information for people that are at the
17 meetings.

18 Q. Okay. Did you ever attend
19 those meetings?

20 A. I do attend those meetings,
21 yes.

22 Q. And for what purpose would you
23 attend those meetings?

24 A. To meet with manufacturers or
25 suppliers or...

1 Q. If you know -- strike that.

2 Let me close the loop on that.

3 At those meetings with
4 manufacturers or suppliers, would you discuss
5 prescription opioids?

6 MR. CIULLO: Object to form.

7 A. If it was a -- if it was a
8 supplier that we purchased those products
9 from or if those suppliers had those in their
10 pipeline, that could be a conversation, yes.

11 BY MR. BOWER:

12 Q. Okay. Other than NACDS and
13 these ECRM meetings, were there any other
14 similar type industry groups or organizations
15 that you attended where discussion of
16 prescription opiates would occur?

17 MS. FUMERTON: Objection, form.

18 A. There are none others that I
19 attended.

20 BY MR. BOWER:

21 Q. Okay. If I could direct your
22 attention to -- sorry, I'm working a little
23 bit backwards here, but the page ending in
24 240. It's kind of towards the end, second
25 page, I think, from the end.

1 You see at the top there,
2 Mr. Singh notes in his e-mail to Sandy that:
3 The DEA raided several Walgreens and CVS
4 stores in Florida in April of 2012 while
5 investigating excessive OxyContin purchases.

6 Do you see that?

7 A. I see that.

8 Q. Were you aware of that?

9 A. I was aware of that.

10 Q. How were you aware of that?

11 A. It was in the news at the time.

12 Q. And then -- in the TV news?

13 A. Uh-huh.

14 Q. When you heard of that, did you
15 do anything at work, talk to anybody about
16 it?

17 MS. FUMERTON: Objection, form.

18 A. I don't remember specific
19 conversations. I would be surprised if we
20 did not discuss it, but I don't remember any
21 specific conversations, no.

22 BY MR. BOWER:

23 Q. And just so I can kind of close
24 your knowledge on this e-mail, you're not
25 familiar with this company, ZAS Management

1 System LLC; is that correct?

2 A. I am not.

3 Q. Do you know whether Sandy is
4 familiar with them?

5 MS. FUMERTON: Objection, form.

6 A. I don't know if Sandy is
7 familiar with them or not.

8 BY MR. BOWER:

9 Q. Did you ever have any
10 conversations with Sandy when you received
11 this e-mail?

12 A. Not that I recall.

13 Q. Is there any reason that you
14 wouldn't have? This seems to be a fairly
15 significant e-mail, correct?

16 MS. FUMERTON: Objection, form.

17 A. We received a lot of e-mails
18 every day. If there -- if they weren't a
19 pressing e-mail, then I don't know that I
20 could remember every -- every e-mail I
21 received every day for the ten years that I
22 was at Walmart.

23 BY MR. BOWER:

24 Q. So you wouldn't have considered
25 this a pressing e-mail; is that correct?

1 This e-mail suggests that Walmart should
2 partner with Purdue to reduce OxyContin
3 abuse; that's not pressing to you?

4 MS. FUMERTON: Objection, form.

5 A. What I would have taken from
6 this e-mail is that they were interested in
7 852 and 867 data, and I would have passed it
8 along to somebody that worked with that data.

9 BY MR. BOWER:

10 Q. What about you personally when
11 you received this, did you think to yourself,
12 oh, maybe we should be working to reduce
13 abuse?

14 MS. FUMERTON: Objection, form.

15 A. As a buyer, my role was really
16 in making sure that we had supply and the
17 lowest possible cost I could get on those
18 products.

19 BY MR. BOWER:

20 Q. And then you forward this
21 e-mail on to Shelton Benson.

22 Do you see that?

23 A. Yes.

24 Q. And why did you do that?

25 A. It appears that I had called

1 Shelton to ask him about it because
2 ValueCentric is an outside company, and they
3 referenced Purdue in this. I was calling to
4 make sure that this was something he was
5 aware of and was a part of.

6 Q. So you were familiar with
7 ValueCentric; is that correct?

8 A. I'm familiar -- I know the name
9 ValueCentric in the market.

10 Q. You didn't conduct any business
11 with them prior to this?

12 A. I did not.

13 Q. Have you ever conducted any
14 business with them?

15 A. I did not.

16 Q. Do you have any knowledge of
17 whether Walmart has ever conducted business
18 with them?

19 MS. FUMERTON: Objection, form.

20 A. I'm not aware.

21 BY MR. BOWER:

22 Q. You're not aware either way; is
23 that correct?

24 A. Correct.

25 Q. Do you recall Mr. Benson ever

1 responding to you?

2 A. I do not.

3 Q. Who is Stephen S-E-I-D? Is
4 that name familiar to you?

5 A. I don't recall.

6 Q. He's not on this e-mail.

7 A. Oh. No.

8 Q. No? Ever meet -- never met
9 with anyone by that name?

10 MS. FUMERTON: Objection, lack
11 of foundation.

12 A. Not that I'm aware of.

13 BY MR. BOWER:

14 Q. Okay. Are you aware of any
15 orders that Walmart placed for oxycodone
16 being canceled due to violations of a
17 manufacturer's sales policy?

18 MS. FUMERTON: Objection, form.

19 A. I don't recall any, no.

20 BY MR. BOWER:

21 Q. It could have happened; you
22 just don't recall it?

23 MS. FUMERTON: Objection, form.

24 A. It could -- it could have
25 happened and I don't recall.

1 (Walmart-Little Exhibit 19
2 marked.)

3 MR. BOWER: I'm just making
4 sure the redactions are right.

5 BY MR. BOWER:

6 Q. You've been handed what's been
7 marked as Exhibit 19. Please take a moment
8 and review the document.

9 The Bates stamp is ACTAVIS, and
10 then 0361537 -- I'm sorry, that Bates number
11 is the number -- the page number of the first
12 unredacted page. The first page of the
13 exhibit ends in 535, just so the record is
14 clear.

15 (Document review.)

16 BY MR. BOWER:

17 Q. Are you ready?

18 A. Yes.

19 Q. Okay. Sorry.

20 Again, Mr. Cohen was your
21 contact at Actavis at the time?

22 A. Yes, he was.

23 Q. Okay. And he's writing you
24 regarding a launch of a new product, correct?

25 A. Yes, I think so.

1 Q. And he's telling Walmart that
2 Actavis will support this launch with a
3 multifaceted marketing campaign, correct?

4 A. Yes.

5 Q. And he's further saying that
6 this marketing campaign will target the top
7 writers of these scripts.

8 Do you see that?

9 A. Top writer of these scripts,
10 yes.

11 Q. And that information was
12 important to you in deciding whether to buy
13 this product; is that correct?

14 MS. FUMERTON: Objection, form.

15 A. That would not be accurate.

16 BY MR. BOWER:

17 Q. Can you -- how would you
18 correct that statement?

19 A. It was important for me to make
20 sure that we had all drugs that stores might
21 need to fill prescriptions. I didn't care if
22 they were marketing doctors or not. If
23 doctors were already writing the prescription
24 because the brand was in the market, then I
25 needed to have the generic when the generic

1 launched.

2 Q. Right. And the marketing plan
3 employed by Actavis would inform Walmart as
4 to whether stores would need to fill
5 prescriptions, correct?

6 MS. FUMERTON: Objection, form.

7 A. That's not correct. The brand
8 companion to the oxymorphone 7.5 and 15 is
9 the Opana ER 7.5 and 15.

10 BY MR. BOWER:

11 Q. Uh-huh.

12 A. I would have script data from
13 the brand utilization that we had currently
14 and would have made my decision off of that.

15 Q. Made your decision to do what?

16 A. On how much product I would
17 need to bring in if I was going to warehouse
18 it or if it was going to be a product that
19 the stores had to purchase via McKesson
20 because we didn't warehouse the item.

21 Q. So Walmart would only warehouse
22 an item if you thought the demand would be
23 sufficient; is that correct?

24 MS. FUMERTON: Objection, form.

25 A. In the majority of instances,

1 that was correct.

2 BY MR. BOWER:

3 Q. And in making that
4 determination, was one of the factors you
5 considered whether the manufacturer was going
6 to market the product to physicians?

7 MS. FUMERTON: Objection, form.

8 A. On brand -- new brand launches,
9 that would be taken into consideration. For
10 generics, it was past utilization.

11 BY MR. BOWER:

12 Q. And just so the record is
13 clear, was this e-mail referencing a brand
14 launch or a generic launch?

15 A. It appears to me that it's
16 referencing a brand launch of the oxymorphone
17 7.5 and 15 milligrams.

18 MR. CIULLO: Object to
19 foundation.

20 BY MR. BOWER:

21 Q. So you were also aware that
22 Actavis was marketing Kadian to physicians,
23 correct?

24 MS. FUMERTON: Objection, form.

25 A. I'm not sure if I knew that or

1 not at this point.

2 BY MR. BOWER:

3 Q. At this point do you recall
4 whether Walmart was warehousing Kadian?

5 A. I don't recall that or not.

6 Q. Do you recall whether Walmart
7 ever warehoused Kadian?

8 A. I don't remember.

9 Q. You'd have to see a document to
10 refresh your recollection?

11 MS. FUMERTON: Objection, form.

12 A. That's true.

13 THE WITNESS: I'm sorry.

14 MR. BOWER: You can answer.

15 A. That's correct.

16 BY MR. BOWER:

17 Q. So you mentioned before you
18 believe that this was referencing a brand
19 launch, but if you see kind of the fourth
20 sentence down, Mr. Cohen writes: We will
21 market these physicians through the year to
22 promote this important cost-saving generic
23 and its availability.

24 Do you see that?

25 A. I do see that. If I said it

1 was referencing a brand launch, I was
2 incorrect. I think what I would have meant
3 to say is the launch -- I thought this was a
4 new generic launch for oxymorphone 7.5 and
5 15. The brand-referenced drug was Opana ER
6 7.5 and 15.

7 Q. Right. But the e-mails and the
8 marketing that's reflected is reflecting
9 marketing for a generic; isn't that correct?

10 MS. FUMERTON: Objection, form.

11 A. That could be what he's
12 stating. It didn't matter to me on a generic
13 if the product was marketed to a physician or
14 not. I made decisions based on past
15 utilization of the brand when a new generic
16 came to market.

17 BY MR. BOWER:

18 Q. So who is Rhonda Thomas?

19 A. She was an assistant in our
20 department.

21 Q. So you're forwarding her this
22 e-mail; is that correct?

23 A. It appears that I did.

24 Q. Even though you weren't
25 concerned whether Actavis was engaged in this

1 marketing?

2 MS. FUMERTON: Objection, form.

3 A. I'm not sure I understand the
4 question.

5 BY MR. BOWER:

6 Q. Why did you forward Ms. Thomas
7 this e-mail?

8 A. I'm not sure today why I
9 forwarded this e-mail to her. She was our
10 assistant.

11 Q. Well, what would be some
12 reasons why you would forward Ms. Thomas
13 e-mails?

14 MS. FUMERTON: Objection, form.

15 A. I may have wanted her to print
16 the e-mail and bring it to me in a different
17 meeting. I may have wanted her to put it on
18 my desk. There could be a number of reasons
19 why I forwarded this to Rhonda.

20 BY MR. BOWER:

21 Q. And when e-mails were printed,
22 what would you typically do with them after
23 you were done looking at them? Would you
24 save them?

25 A. We --

1 MS. FUMERTON: Objection, form.

2 A. When I printed, we would throw
3 them in a box for shredding.

4 BY MR. BOWER:

5 Q. Walmart ever tell you to save
6 e-mails that related to business purposes?

7 A. No.

8 Q. Are you aware of any -- of any
9 Walmart policy related to saving e-mails?

10 A. I am not.

11 Q. From your perspective, they
12 were shredded, correct?

13 MS. FUMERTON: Objection, form.

14 A. If I printed them, I threw them
15 in a bin to be recycled and shredded.

16 BY MR. BOWER:

17 Q. What about your electronic
18 copies, what would you do with those?

19 MS. FUMERTON: Objection, form.

20 A. Some I stored under folders in
21 my computer under the manufacturer. Others I
22 deleted. It depended on what I thought of
23 the e-mail at that particular time, if I
24 thought --

25 ///

1 BY MR. BOWER:

2 Q. Some e-mails you deleted
3 immediately upon receipt; is that correct?

4 A. Yes, that would be accurate.

5 Q. Walmart didn't -- did Walmart,
6 to the best of your knowledge, have a policy
7 regarding electronic correspondence with
8 business partners and preserving those
9 records?

10 MS. FUMERTON: Objection, form.

11 A. Not that I'm aware of.

12 BY MR. BOWER:

13 Q. You see at the bottom of his
14 e-mail there on that page, he notes that:
15 These two SKUs grew 50% year over year?

16 A. Yes, I see that.

17 Q. Those are prescription opiates,
18 correct?

19 A. Yes, they are.

20 Q. Was Walmart experiencing
21 similar growth of those prescription opiates?

22 MS. FUMERTON: Objection, form.

23 A. I don't recall what our
24 utilization was on those drugs.

25 ///

1 BY MR. BOWER:

2 Q. Would it have been surprising
3 to you if Walmart had not been experiencing
4 growth corresponding to the market?

5 MS. FUMERTON: Objection, form,
6 lack of foundation.

7 A. I don't know that I would ever
8 just take a manufacturer's word on what the
9 market was doing.

10 BY MR. BOWER:

11 Q. You would look for yourself,
12 right?

13 A. I would try to find out that
14 information myself.

15 (Walmart-Little Exhibit 20
16 marked.)

17 BY MR. BOWER:

18 Q. I'll hand you what's been
19 marked as Exhibit 20. Take a moment to
20 review that. Again, it has some redaction on
21 it based on e-mails that you're not on. This
22 is an Actavis document, but it's an e-mail
23 that you sent to Mr. Cohen again, and the
24 Bates number -- beginning Bates number is
25 ACTAVIS0338793 and it ends in 796.

1 (Document review.)

2 BY MR. BOWER:

3 Q. Are you ready?

4 A. Yes.

5 Q. This is an e-mail from 2011
6 from yourself to Mr. Cohen; is that correct?

7 A. That's correct.

8 Q. Okay. And this -- would this
9 be an example of you looking at the market
10 and noting an increase in ordering patterns?

11 A. No. This would be an example
12 of I was out of stock of product in the
13 distribution center and needed additional
14 supply from the manufacturer.

15 Q. Well, in fact, your e-mail
16 states that due to market conditions.

17 Do you see that?

18 A. Yes.

19 Q. Okay. We need to increase our
20 current order patterns to satisfy increased
21 demand.

22 Do you see that?

23 A. Yes.

24 Q. So Walmart was experiencing
25 increased demand for OxyContin in 2011. Is

1 that an accurate statement?

2 MS. FUMERTON: Objection, form.

3 A. We were out of product at the
4 Walmart distribution center.

5 BY MR. BOWER:

6 Q. Ma'am, I'm just reading from
7 your e-mail here. It says: Satisfy
8 increased demand at the store level.

9 Do you see that?

10 A. There could be increased demand
11 at store level because I had no product in
12 the distribution center as well as increased
13 prescriptions. It could be either.

14 Q. Well, is the demand impacted by
15 the availability of the product at the
16 distribution center?

17 MS. FUMERTON: Objection, form.

18 BY MR. BOWER:

19 Q. I mean, the demand is the
20 demand, right?

21 MS. FUMERTON: Objection, form.

22 A. If stores sense that there's a
23 lull in product or availability of product in
24 the market, they will try to continue to
25 order more product so that they can satisfy

1 customers. The stores never wanted to be out
2 of product and have to turn away a customer.

3 BY MR. BOWER:

4 Q. But you're -- that's not what
5 your e-mail says, though, is it? It says:
6 Satisfy increased demand at the store level
7 and increase safety stock, right?

8 A. We wanted to have increased --

9 MS. FUMERTON: Objection, form.

10 BY MR. BOWER:

11 Q. That's what it says, correct?

12 MS. FUMERTON: Objection, form.

13 A. Yes, that is what it says.

14 BY MR. BOWER:

15 Q. So Walmart is seeing increased
16 demand, correct?

17 MS. FUMERTON: Objection, form.

18 A. I'm seeing increased orders at
19 the distribution center based off of the
20 store demand. Whether that store demand is
21 from stores wanting additional product
22 because they're concerned about an issue or
23 because they're concerned about the
24 out-of-stock at the distribution center or
25 they have increased scripts, I wouldn't know.

1 BY MR. BOWER:

2 Q. I hear what you're saying, but
3 your e-mail notes both of those, right?
4 Because you say an increased safety stock.
5 So there's two reasons that you need more
6 product, right?

7 MS. FUMERTON: Are you finished
8 with your question now?

9 MR. BOWER: Yes.

10 MS. FUMERTON: Objection, form.

11 MR. BOWER: I'll rephrase.

12 BY MR. BOWER:

13 Q. Your e-mail to Mr. Cohen
14 reflects two different reasons that you want
15 him to pass this information along to his
16 planning group, correct?

17 MS. FUMERTON: Objection, form.

18 A. I think I have -- I have stated
19 two different reasons in here. I think there
20 are additional things that go into those two
21 reasons.

22 BY MR. BOWER:

23 Q. Okay. And as you sit here
24 today, why did you believe that there are
25 additional things as opposed to relying on

1 this e-mail?

2 MS. FUMERTON: Objection, form.

3 A. I know what would cause me and
4 trigger me to go out and look for additional
5 product in the market, and it would be
6 out-of-stocks at the warehouse.

7 Now, are there out-of-stocks at
8 the warehouse because a manufacturer couldn't
9 keep up with their production, if they have a
10 problem on their side? Is it -- was every
11 manufacturer out of product and I'm just
12 trying to get bits and pieces from these
13 statements? I can't tell what the issue was,
14 what the true market issue was at this point
15 in time.

16 BY MR. BOWER:

17 Q. Okay. As you sit here today,
18 do you have any reason to doubt that the
19 current order patterns -- sorry.

20 As you sit here today -- strike
21 that. I'll start over.

22 As you sit here today, do you
23 have any reason to doubt that you needed to
24 increase our current order patterns to
25 satisfy increased demand at the store level?

1 MS. FUMERTON: Objection, form.

2 A. No. I think we had increased
3 orders at the stores because we were out of
4 stock at the warehouse, but I believe we had
5 increased orders at the stores, and I needed
6 to increase my demand for that, yes.

7 BY MR. BOWER:

8 Q. You believe that you had
9 increased orders at the stores because you
10 were out of stock, not because there was the
11 demand increase?

12 MS. FUMERTON: Objection, form.

13 A. That is a potential. Our
14 orders from the stores would increase when we
15 would have out-of-stock situations.

16 BY MR. BOWER:

17 Q. Can you explain how that would
18 work?

19 A. If a pharmacist would detect
20 that there was an issue in the market, if we
21 had had periodic out-of-stocks, if they had
22 customers coming to them telling them they
23 couldn't receive product at another store
24 because they were out of stock, they would be
25 concerned and they would try to increase

1 their orders from the distribution center to
2 hold additional stock.

3 Q. And Walmart had a policy in
4 place to monitor those orders, correct?

5 MS. FUMERTON: Objection, form.

6 A. Yes, they did.

7 BY MR. BOWER:

8 Q. In fact, you verified to the
9 manufacturers that Walmart had a process in
10 place, correct?

11 MS. FUMERTON: Objection, form.

12 A. Correct. Correct.

13 BY MR. BOWER:

14 Q. And how did Walmart provide
15 such a verification?

16 MS. FUMERTON: Objection, form.

17 A. We would have conversations
18 with the manufacturers or I would get them in
19 touch with people that worked on our
20 suspicious order monitoring so they could get
21 the information that they needed from them.

22 BY MR. BOWER:

23 Q. And who would you put the
24 manufacturers in contact with at Walmart?

25 MS. FUMERTON: Objection, form.

1 A. I don't remember specific
2 names. It would fall under Miranda, and I
3 don't remember her last name as I'm sitting
4 here.

5 BY MR. BOWER:

6 Q. Miranda Johnson?

7 A. It could be Johnson. I know
8 she had gotten married, I don't remember the
9 last name.

10 Q. Okay. And, in fact, Walmart's
11 contracts with its manufacturers required
12 Walmart to have those programs in place,
13 correct?

14 MS. FUMERTON: Objection, form.

15 MR. BOWER: I'll strike that.

16 I'll ask a different question.

17 BY MR. BOWER:

18 Q. Did Walmart's contracts with
19 its manufacturers require Walmart to have a
20 suspicious order monitoring in place that met
21 the legal requirements?

22 MS. FUMERTON: Objection, form.

23 A. I don't recall that.

24 BY MR. BOWER:

25 Q. What is safety stock at the

1 store level?

2 A. Safety stock at store level
3 would be an increased supply at store level
4 on their shelf that would protect them
5 against out-of-stocks if we were having
6 out-of-stocks at the distribution center.

7 Q. Did Walmart allow the
8 pharmacies to have a safety stock for
9 prescription opiates?

10 A. Store -- I'm not as familiar
11 with safety stock levels because that was a
12 replenishment setting. Some settings were
13 put in from the home office and some were at
14 store level. What the difference was between
15 opioids and regular products, I don't know.

16 Q. So we have -- would someone --
17 strike that.

18 Who would know that? Would
19 that be someone from the replenishment side?

20 MS. FUMERTON: Objection, form.

21 A. I would have to be speculating,
22 but maybe replenishment would know that or
23 should know that.

24 BY MR. BOWER:

25 Q. Who else -- I don't want you to

1 speculate, but if we wanted to get that
2 information, who would we talk to?

3 MS. FUMERTON: Objection, form.

4 A. I'm not sure.

5 BY MR. BOWER:

6 Q. Well, you're e-mailing about
7 safety stock, right?

8 A. Yes.

9 Q. And you're e-mailing about
10 safety stock for OxyContin, right?

11 A. Yes.

12 Q. So based on your understanding
13 at the time, that must have been a permitted
14 activity, correct?

15 MS. FUMERTON: Objection, form.

16 A. I wanted safety stock at the
17 DC. I know that my e-mail indicates safety
18 stock at the store level. I think I just
19 wrote a -- I had a mistake in my typing. It
20 would be safety stock that I wanted to hold
21 at the distribution level, which is what was
22 under my control.

23 BY MR. BOWER:

24 Q. So you have specific
25 recollection of the circumstances about this

1 e-mail?

2 A. No, I don't.

3 Q. Okay. Then what's your basis
4 for that statement?

5 A. Because I didn't have anything
6 to do with safety stock at the store level.
7 What fell under me was the safety stock at
8 the store -- at the warehouse and the product
9 that we had in the warehouse. If there were
10 warehouse out-of-stocks, I was looking for
11 additional product.

12 Q. So why wouldn't you have just
13 told Mr. Cohen the warehouse was out of
14 stock?

15 MS. FUMERTON: Objection, form,
16 asked and answered.

17 A. I think I just made an error in
18 my e-mail. It wasn't --

19 BY MR. BOWER:

20 Q. Why do you believe as you sit
21 here today this e-mail is in error?

22 MS. FUMERTON: Objection, form.

23 A. I don't believe the whole
24 e-mail is in error. I think when I stated
25 safety stock at store level, it was an error.

1 The distribution center was under -- was what
2 I was concerned with and inventory levels at
3 the distribution center.

4 BY MR. BOWER:

5 Q. And what about your reference
6 to increased demand at store level, do you
7 believe that was an accurate statement?

8 MS. FUMERTON: I'm sorry,
9 inaccurate or an accurate?

10 BY MR. BOWER:

11 Q. Increased demand at store
12 level, do you believe that was an accurate
13 statement?

14 A. Yes, increased demand at store
15 level could mean stores were ordering
16 additional product at the distribution center
17 because I was out of stock, so they were
18 placing additional orders trying to get
19 product.

20 Q. And they could have also been
21 placing additional orders because they, in
22 fact, had increased demand, correct?

23 MS. FUMERTON: Objection, form.

24 A. If the stores were placing
25 increased orders just because they had an

1 increase in demand, I don't know that it
2 would trigger any response from me unless the
3 distribution center was out of product.

4 BY MR. BOWER:

5 Q. Well, it could have been both,
6 just like your e-mail suggests, right?
7 There's increased demand and they're out of
8 product, right?

9 MS. FUMERTON: Objection, form.

10 BY MR. BOWER:

11 Q. Could have been both those
12 circumstances.

13 A. It could be potentially --

14 MS. FUMERTON: Objection, form.

15 THE WITNESS: Sorry.

16 BY MR. BOWER:

17 Q. Could it have been both of
18 those scenarios?

19 A. It could have been both of
20 those scenarios.

21 (Walmart-Little Exhibit 21
22 marked.)

23 BY MR. BOWER:

24 Q. Okay. You've been handed
25 what's been marked as Exhibit 21. Take a

1 moment to review this e-mail. I note it's
2 another Actavis document. This one is ending
3 in Bates number 00382802, and again, it has
4 redactions based on subsequent e-mails you
5 were not on.

6 (Document review.)

7 BY MR. BOWER:

8 Q. Are you still reviewing it?

9 A. I'm finished.

10 Q. Would you agree that this is an
11 example of a Walmart order for oxycodone
12 being cut?

13 MS. FUMERTON: Objection, form.

14 A. It appears there was a PO that
15 was canceled, yes.

16 BY MR. BOWER:

17 Q. Okay. And indeed, it was
18 canceled because Actavis had already filled
19 Walmart's normal monthly usage, correct?

20 MS. FUMERTON: Objection, form.

21 A. That is what's stated here.

22 BY MR. BOWER:

23 Q. And Walmart attempted to order
24 above and beyond its monthly usage, correct?

25 MS. FUMERTON: Objection, form.

1 A. I have to go by what's on the
2 e-mail.

3 BY MR. BOWER:

4 Q. Okay. Well, you -- the last
5 chain in the e-mail is a -- your e-mail again
6 to Mr. Cohen saying what's up with this,
7 right?

8 A. That's not an unusual response
9 from me. If replenishment had contacted me
10 or copied me on any e-mail that had anything
11 to do, I would reach out to the national
12 account manager for explanation on what's
13 going on.

14 Q. Well, but this -- doesn't this
15 e-mail tell you what's going on? The order's
16 been cut because it's too high, right?

17 MS. FUMERTON: Objection, form.

18 MR. BOWER: Strike that.

19 BY MR. BOWER:

20 Q. The order's been canceled
21 because it's above the normal monthly
22 average; is that correct?

23 MS. FUMERTON: Objection, form.

24 A. That's what's stated here.

25 ///

1 BY MR. BOWER:

2 Q. Okay. And this order would
3 have been placed by Rae Smith?

4 A. Yes.

5 Q. She is a replenishment manager;
6 is that correct?

7 A. That's correct.

8 Q. Do you know what -- if you see
9 her signature there, it has: Rae Smith,
10 Replenishment Manager - WM Department 38.

11 Do you know what that refers
12 to?

13 A. The pharmacy department inside
14 Walmart is department 38.

15 Q. And for a period of time was
16 Ms. Smith responsible for replenishment
17 orders for oxy 30?

18 MS. FUMERTON: Objection, form.

19 A. I don't recall. I see that she
20 was on this e-mail, so -- I don't recall.

21 BY MR. BOWER:

22 Q. The only person you recall
23 being in replenishment for prescription
24 opiates was Traci Cope; is that correct?

25 MS. FUMERTON: Objection, form.

1 A. Linda Wilson.

2 BY MR. BOWER:

3 Q. And Linda Wilson.

4 Based on your experience, of
5 those -- between Ms. Smith, Ms. Cope and
6 Ms. Wilson, who held that replenishment role
7 for the longest period of time with respect
8 to prescription opiates?

9 MS. FUMERTON: Objection, form,
10 lack of foundation, misrepresents her
11 testimony.

12 MR. BOWER: I'd appreciate it
13 if you'd just keep it objection to
14 form.

15 MS. FUMERTON: I'd appreciate
16 if you'd ask good questions.

17 A. I don't remember. I'm unsure
18 if Traci ever had pain. I just don't
19 remember.

20 BY MR. BOWER:

21 Q. You don't remember -- what is
22 it that you don't remember -- do you remember
23 anyone who was responsible for replenishment
24 for prescription II opiates?

25 MS. FUMERTON: Objection, form.

1 A. I remember Linda the last
2 couple of years that I had responsibility. I
3 see Jasen Jarrell is on here, he's a
4 replenishment manager. I'm not sure at this
5 period of time who had responsibility for
6 pain.

7 BY MR. BOWER:

8 Q. I'm just asking you based on
9 your experience from 2008 to 2016, right?

10 MS. FUMERTON: Objection, form.

11 That's not a question.

12 A. I left Walmart in 2018.

13 BY MR. BOWER:

14 Q. 2018, sorry.

15 So between 2008 and 2018, can
16 you just provide to us who the folks are that
17 you're aware of that were responsible for
18 replenishment of prescription opiates?

19 MS. FUMERTON: Objection, form.

20 A. The only one I remember was the
21 last few years, was Linda. I don't remember
22 on the early years who had that position.

23 BY MR. BOWER:

24 Q. Okay. What about does the name
25 Maria Lesny ring a bell? I don't believe

1 she's on this e-mail, I'm just --

2 A. She's right here.

3 Q. Oh, she is, okay.

4 A. Looks like she works for

5 Actavis.

6 Q. Actavis. Okay. Right, thank
7 you.

8 Right. She's the one who sends
9 the e-mail that the order has been canceled,
10 correct?

11 A. Yes, I see that.

12 Q. And do you see that Rae
13 responds to her that demand has increased?
14 You see that?

15 A. I see that --

16 MS. FUMERTON: Are you saying
17 responds to --

18 MR. BOWER: Yeah.

19 MS. FUMERTON: Where are you
20 looking?

21 MR. BOWER: Rae, top of the
22 page ending in 06, Rae's response to
23 Maria.

24 MS. FUMERTON: You're working
25 backwards unless I'm not --

1 MR. BOWER: I'm looking at the
2 top of the page ending in 06. I
3 believe the witness sees it.

4 MS. FUMERTON: Oh, I'm sorry.
5 It's said twice in the document. It's
6 on a different paragraph.

7 MR. BOWER: Okay. I'm sorry.

8 MS. FUMERTON: Okay. So I'm
9 with you now. I'm sorry, that's my
10 fault.

11 MR. BOWER: No problem.

12 MS. FUMERTON: Okay.

13 BY MR. BOWER:

14 Q. So again, Walmart is telling
15 the folks at Actavis that demand is
16 increasing for OxyContin, right?

17 MS. FUMERTON: Objection, form.

18 A. I see that she has this in the
19 e-mail.

20 BY MR. BOWER:

21 Q. Do you have any idea what
22 information Rae would have looked at before
23 making that statement?

24 A. I do not know.

25 Q. Do you have any understanding

1 as to why she's telling Actavis that the
2 forecast needs to increase on your end?

3 MS. FUMERTON: Objection, form.

4 A. I don't know.

5 BY MR. BOWER:

6 Q. She wants to increase your
7 orders, right, and she doesn't want them to
8 be canceled going forward; isn't that
9 correct?

10 MS. FUMERTON: Objection, form.

11 Objection, form.

12 A. That's what appears in the
13 e-mail.

14 BY MR. BOWER:

15 Q. Do you recall ever receiving a
16 response from Mr. Cohen on this issue?

17 A. I do not.

18 Q. Did you -- do you recall taking
19 any actions in light of this issue?

20 MS. FUMERTON: Objection, form.

21 A. I do not.

22 BY MR. BOWER:

23 Q. For example, did you seek
24 product from another supplier?

25 MS. FUMERTON: Objection, form.

1 A. I do not recall.

2 BY MR. BOWER:

3 Q. Could have happened, you just
4 don't recall?

5 A. I don't recall. I -- just
6 reading this today, I don't think I would
7 because she said she still has product at the
8 distribution center. If there was product in
9 the DC, I don't think I would have taken
10 action, but I don't have -- I don't recall.

11 Q. Okay. At what point would you
12 take action? Would you wait until the DC was
13 out of product?

14 A. Generally I would wait until
15 the distribution center was out of product.

16 Q. And at that point, would you
17 seek to obtain the product from some other
18 manufacturer?

19 A. Yes, that's what I would do.

20 Q. Okay.

21 (Walmart-Little Exhibit 22
22 marked.)

23 BY MR. BOWER:

24 Q. You've been handed what's been
25 marked as Exhibit 22. You might want to keep

1 out Exhibit 21. I might ask some questions
2 as they're related, because Exhibit 22
3 appears to be an e-mail dated June 21st --
4 sorry, June 22nd, which is the day after the
5 prior correspondence.

6 So just take a moment and
7 review it, and then we can have some
8 questions on it.

9 (Document review.)

10 MR. BOWER: While the witness
11 is reading the document, the Bates
12 number of this one is ALLERGAN_MDL and
13 it's 00144683 through -- and the
14 attachment is 684, and then 685 is a
15 native, and we included the native
16 with a cover sheet.

17 (Document review.)

18 BY MR. BOWER:

19 Q. Are you done reviewing the
20 document?

21 A. Not yet.

22 Q. Okay.

23 (Document review.)

24 BY MR. BOWER:

25 Q. Are you ready?

1 A. I'm done.

2 Q. Okay. So as reflected on
3 Exhibit 21, you e-mail Mr. Cohen on June 21st
4 about an order that's been canceled, right,
5 asking him what's up with this?

6 A. Yes.

7 Q. On June 22 you get an e-mail
8 from Mr. Cohen with a snapshot of Walmart's
9 oxy shipments, right?

10 A. Yes.

11 Q. Right? And he says that they
12 will most definitely need a revised forecast
13 from you. You see that?

14 A. I do see that.

15 Q. Did you ever provide him with a
16 revised forecast?

17 A. I'm not sure if I did or not.

18 Q. Do you know whether Linda ever
19 supplied him with a revised forecast?

20 A. I don't remember if she did or
21 not.

22 Q. Would you have done so --
23 strike that.

24 If a revised forecast would
25 have been provided to Mr. Cohen, would it

1 have been done via e-mail?

2 A. It could have been done e-mail
3 or telephone.

4 Q. You can provide a forecast over
5 the telephone; is that correct?

6 A. I can report numbers to a
7 manufacturer over the telephone, yes.

8 Q. Okay. And would the
9 manufacturer then allow those numbers to be
10 used for meeting their SOM requirements?

11 MR. CIULLO: Objection,
12 foundation.

13 MS. FUMERTON: Objection, form.

14 A. I'm not sure what a
15 manufacturer needs to do for their SOM
16 requirements. If --

17 BY MR. BOWER:

18 Q. Well, if you look at the
19 e-mail, Mr. Cohen is telling you --

20 MS. FUMERTON: She hadn't
21 finished her question.

22 MR. BOWER: No, she said --
23 okay. Have you finished your answer?

24 MS. FUMERTON: She was still
25 talking and you started talking. If

1 she's finished, that's fine.

2 MR. BOWER: No, no, I

3 apologize. Please finish.

4 A. I think if I was talking to him
5 over the phone and provided something and he
6 needed me to put something in an e-mail, that
7 I would have followed up and done so at the
8 time.

9 BY MR. BOWER:

10 Q. Okay. And he notes here: This
11 is part of our SOM requirements established
12 by Actavis Corp.

13 Do you see that?

14 A. I see that.

15 Q. And those requirements are to
16 ensure proper handling and shipments of our
17 C-IIs, right?

18 A. Yes.

19 Q. And so that's why he's asking
20 Walmart for a revised forecast, right?

21 MS. FUMERTON: Objection, form.

22 A. That's what it appears in this
23 e-mail, yes.

24 BY MR. BOWER:

25 Q. Okay. And he notes that: We

1 know you're only ordering based on your
2 demand, right?

3 A. That's what this e-mail states,
4 yes.

5 Q. Do you have any reason to doubt
6 that that statement is accurate?

7 MS. FUMERTON: Objection, form,
8 lack of foundation.

9 A. I do not have any reason to
10 doubt that, no.

11 BY MR. BOWER:

12 Q. This isn't the first time
13 Actavis has asked for additional support for
14 its SOM program, is it?

15 MS. FUMERTON: Objection, form.

16 A. I don't remember.

17 BY MR. BOWER:

18 Q. You wouldn't be able to recall
19 without seeing a document; is that correct?

20 A. That's accurate.

21 (Walmart-Little Exhibit 23
22 marked.)

23 BY MR. BOWER:

24 Q. You've been handed what's been
25 marked as Exhibit 23. This is another

1 Actavis e-mail. This one does not have a
2 confidential stamp, so we should all agree
3 it's a confidential document, and the Bates
4 number is 338574 through 579. Okay.

5 Just take a moment to review
6 the document.

7 (Document review.)

8 BY MR. BOWER:

9 Q. Are you still reviewing the
10 document?

11 MS. FUMERTON: Are you --

12 A. I'm okay.

13 BY MR. BOWER:

14 Q. Okay. This is an e-mail from
15 Mr. Cohen to yourself in November 2011,
16 correct?

17 A. Correct.

18 Q. All right. And this is about a
19 year prior to the prior exhibit we looked at?

20 A. Correct.

21 Q. And again, Mr. Cohen is asking
22 Walmart to support with documentation as to
23 its increased demand for oxycodone, correct?

24 You see Mr. Cohen's e-mail to
25 you on the bottom of the first page there on

1 November 9th at 7:48, he says: As part of
2 our SOM -- that's suspicious order
3 monitoring, correct?

4 A. That's correct.

5 Q. Okay. We need additional
6 support documentation as to why Walmart has
7 this increased demand.

8 Do you see that?

9 A. I see that.

10 Q. So Walmart had increased demand
11 in 2011?

12 MS. FUMERTON: Objection, form.

13 A. Well, what I'm not sure in this
14 e-mail -- I don't understand these numbers in
15 the back of this e-mail.

16 BY MR. BOWER:

17 Q. Okay.

18 A. On products and -- I don't know
19 if this is my monthly utilization, is this my
20 monthly ordering or what these numbers
21 actually mean.

22 Q. Perhaps if we had the documents
23 from Walmart we could get to the bottom of
24 that, but unfortunately we don't. This is
25 all we have.

1 A. And in my -- in my --

2 MS. FUMERTON: Objection. I
3 mean, there's no question pending.

4 MR. BOWER: The witness is
5 saying this is unclear, and --

6 MS. FUMERTON: Okay. Well, you
7 didn't ask a question, and you're
8 making commentary, just sort of random
9 commentary on her questions.

10 So if you have a question, you
11 can ask her. Otherwise I'm objecting
12 and -- to just your additional
13 commentary on what she's saying.

14 BY MR. BOWER:

15 Q. So it appears that you made a
16 request to Mr. Cohen, right? He notes: As
17 per your request here's a snapshot of
18 purchasing data on our oxycodone 15 and 30
19 tablets, right?

20 A. Yes, I do see that.

21 Q. And you're having a hard time
22 understanding the way this -- the information
23 is reflected in the e-mail, correct?

24 A. Yes, that is accurate.

25 Q. The formatting makes it hard to

1 decipher what is actually being provided
2 here?

3 A. That's accurate.

4 Q. Going to the second page, do
5 you know who Jinping McCormick is?

6 A. I do know who Jinping is.

7 Q. Okay. Who is Jinping?

8 A. She worked at Actavis at this
9 time. I don't remember her capacity, if she
10 was in demand or -- I don't remember what her
11 role was at Actavis, but I did know who she
12 was.

13 Q. Okay. If you'd turn to the
14 last page in the document, her signature
15 reflects that she's director of marketing.

16 A. Oh.

17 Q. So she's a marketer at Actavis,
18 right?

19 MS. FUMERTON: Objection, form.

20 BY MR. BOWER:

21 Q. Any reason to doubt that, what
22 her -- what it says there?

23 A. That is her title here.

24 Q. Do you have any understanding
25 as to why she's getting involved in the

1 Walmart ordering?

2 MS. FUMERTON: Objection, form.

3 A. It's my understanding that
4 marketing on generic companies is truly like
5 pricing and contracting.

6 BY MR. BOWER:

7 Q. In Steve's e-mail to you he
8 writes: A short summary letter, based on
9 market conditions, lack of competitive
10 product leading to increased demand would be
11 helpful.

12 Do you see that?

13 A. I see that.

14 Q. Do you know whether Walmart
15 ever provided such a summary letter?

16 A. I do not know at that time.

17 Q. As you sit here today, do you
18 know whether that information was provided?

19 A. Could you repeat that question?

20 Q. Sure.

21 As you -- I asked you whether
22 Walmart ever provided a letter and your
23 response was: I do not know at that time.

24 So I'm asking you since that
25 time, have you become aware of whether that

1 information was provided?

2 A. I'm sorry. I do not know at
3 this time if we provided that letter.

4 Q. Okay. If that information had
5 been provided to Walmart, who -- I mean,
6 sorry -- to Actavis, who at Walmart would
7 have provided that information?

8 A. I would have provided that
9 information.

10 Q. Okay. Is there a reason you're
11 asking Mr. Cohen what your running average
12 for the last six months was?

13 A. From what I'm reading in my
14 response here, is I'm not agreeing with him
15 that there's an increase in demand.

16 From what I'm reading, and I
17 can't verify it based on the formatting of
18 these back numbers, it appears to me that my
19 thought process was my orders were still in
20 line, they were just very sporadic, and it
21 was -- it was Thanksgiving month. It was
22 November, and we typically order our month
23 supply at the early part of the month because
24 manufacturers shut down, we have less people
25 in the office. I was just preparing for that

1 holiday.

2 Q. What do you mean you were
3 preparing for the holiday? How were you
4 preparing? This is a replenishment order,
5 right?

6 MS. FUMERTON: Objection, form.

7 A. Replenishment would order
8 early.

9 BY MR. BOWER:

10 Q. Right. But you weren't in
11 charge of replenishment, right?

12 A. I was not in charge of
13 replenishment. I was giving more of an
14 explanation to what I thought the situation
15 was. I was not agreeing with him that we had
16 an increase in demand.

17 Q. Well, you weren't disagreeing
18 with him, were you?

19 MS. FUMERTON: Objection, form.

20 BY MR. BOWER:

21 Q. Where in this e-mail do you
22 disagree with him?

23 MS. FUMERTON: Objection, form.

24 A. All I can do is read my
25 response here. It says: What is my running

1 average for the last six months as our
2 ordering is very sporadic? We are banking on
3 being shut down the second half of the month
4 for Thanksgiving.

5 I know that what I meant in
6 that is we ordered early in the month and we
7 don't early -- order as much at the end. So
8 unless I know exactly how they're calculating
9 month-to-month numbers and how I'm
10 calculating, are they looking from the 15th
11 to the 15th and I'm looking from the 1st to
12 the 30th? Our numbers could be -- could be
13 off.

14 BY MR. BOWER:

15 Q. Well, in fact, Jinping reflects
16 that information, right? She says: I
17 explained yesterday we have shipped Walmart
18 12,000 bottles in November. Their average
19 monthly shipment is 15,704 bottles. If we
20 ship the 4,000 open order, Walmart would have
21 been over the monthly average. Right?

22 MS. FUMERTON: Objection --

23 BY MR. BOWER:

24 Q. So she's already addressing
25 your concern.

1 MS. FUMERTON: Objection, form.

2 A. But are they looking at the
3 month from -- they're apparently looking at
4 it from November 1st to November 30th. I'm
5 not sure did I receive a shipment in October
6 at all or compared to what day in October I
7 may have received a shipment.

8 I don't know if I got that full
9 15,700 in October or am I -- do I have a
10 deficit today already because they only
11 shipped me, I don't know, 10,000 in October?
12 I don't know that information from what's in
13 front of me.

14 BY MR. BOWER:

15 Q. But you do know based on this
16 e-mail that they've already shipped -- it's
17 November 9th, right? As of this date,
18 they've already shipped 12,000 bottles in
19 November, right?

20 A. Yes.

21 Q. And Walmart has ordered another
22 4,000 bottles, right? And Actavis is calling
23 that into question, right?

24 MS. FUMERTON: Objection, form.

25 There's like seven questions in there.

1 MR. BOWER: Let's break them
2 down, right.

3 BY MR. BOWER:

4 Q. As of this day, November 9th,
5 Walmart has already -- strike that.

6 As of November 9th, Actavis has
7 already shipped 12,000 bottles in November,
8 correct?

9 MS. FUMERTON: Objection, form.

10 BY MR. BOWER:

11 Q. That's what's reflected on this
12 e-mail.

13 A. I see that in the e-mail.

14 Q. Do you have any reason to doubt
15 that that information was inaccurate?

16 MS. FUMERTON: Objection, form.

17 A. No.

18 BY MR. BOWER:

19 Q. The e-mail goes on to state
20 that, their, meaning Walmart's, average
21 monthly shipment is 15,704 bottles.

22 Do you see that?

23 A. I see that.

24 Q. Do you have any reason to doubt
25 that information is accurate?

1 MS. FUMERTON: Objection, form.

2 A. I do not.

3 BY MR. BOWER:

4 Q. And then the e-mail goes on to
5 state: If we ship the 4,000 open order,
6 Walmart would have been over the monthly
7 average and we're only the 8th day of the
8 month.

9 Do you see that?

10 A. I do see that.

11 Q. Okay. You state that -- sorry.
12 Ms. McCormick further states that: I'm not
13 trying to hold up sales but need a reasonable
14 explanation from Walmart to follow our SOM
15 process.

16 Do you see that?

17 A. Yes, I see that.

18 Q. So regardless of Walmart's
19 reasons for the order, Actavis needed
20 justification for the order from Walmart
21 pursuant to its SOM program, correct?

22 MR. CIULLO: Object.

23 MS. FUMERTON: Objection, form.

24 A. I see that in the e-mail.

25 ///

1 BY MR. BOWER:

2 Q. Okay. Are you familiar with
3 what criteria a SOM program is supposed to
4 monitor for ordering of prescription opiates?

5 MS. FUMERTON: Objection, form.

6 A. I am not.

7 BY MR. BOWER:

8 Q. Are you familiar with whether a
9 SOM program is supposed to monitor for
10 unusual volume?

11 MS. FUMERTON: Objection, form.

12 A. My knowledge is that it
13 monitors purchases and volume of purchases,
14 and that's all I'm aware of.

15 BY MR. BOWER:

16 Q. Are you aware of whether a SOM
17 program is supposed to monitor for an unusual
18 pattern of purchases?

19 MS. FUMERTON: Objection, form.

20 A. I'm not aware.

21 BY MR. BOWER:

22 Q. And indeed, you acknowledge
23 that our ordering is very sporadic in your
24 e-mail to Mr. Cohen, correct?

25 MS. FUMERTON: Objection, form.

1 A. Yes, I do.

2 BY MR. BOWER:

3 Q. Right. Walmart's ordering had
4 an unusual pattern, did it not?

5 MS. FUMERTON: Objection, form.

6 A. Yes, it did.

7 (Walmart-Little Exhibit 24
8 marked.)

9 BY MR. BOWER:

10 Q. You've been handed what's been
11 marked as Exhibit 24.

12 MS. FUMERTON: We've been going
13 for a while. Is this a good stopping
14 point? We've been going, I think, for
15 another hour 20 minutes or so.

16 MR. BOWER: We've been going
17 that long? Sure. I didn't know we
18 had been going that long. Sure.

19 THE VIDEOGRAPHER: Off the
20 record, 3:22 p.m.

21 (Recess taken, 3:22 p.m. to
22 3:41 p.m.)

23 THE VIDEOGRAPHER: Back on
24 record. The time is 3:41 p.m.

25 ///

1 BY MR. BOWER:

2 Q. Okay. Ms. Little, before we
3 went off, I handed you Exhibit 24, but you
4 haven't reviewed it yet. So why don't you
5 take a moment to review that, and then I'll
6 have just a few questions on this one.

7 (Document review.)

8 BY MR. BOWER:

9 Q. All right. Are you ready?

10 A. Yes.

11 Q. Okay. It appears that
12 Exhibit 24 is kind of a later e-mail than
13 Exhibit 22, which Walmart has now provided
14 the updated usages, correct, to Mr. Cohen?

15 A. For the oxy 15 and 30.

16 Q. Right. And he notes that: It
17 is unlikely that we will be able to increase
18 your monthly shipments.

19 Do you see that?

20 A. I see that.

21 Q. Okay. And he's writing to you
22 and Traci Cope and Patsy Little -- I'm sorry,
23 yourself and Traci Cope, right?

24 A. Yes.

25 Q. Do you know why he's including

1 Traci in those e-mails?

2 A. I'm not sure at this time. I'm
3 guessing Traci had had some correspondence
4 and was doing some work with pain at the
5 time.

6 Q. Well, do you see later on --
7 earlier on, rather, the document ending in
8 482, she's the one who sends him the polls
9 from the warehouse?

10 A. I do see that.

11 Q. Do you see that?

12 Does this refresh your
13 recollection that she was involved in
14 replenishment during this time period for
15 Schedule II narcotics?

16 MS. FUMERTON: Objection, form.

17 A. I don't remember this specific
18 event, but I do see it on the e-mail.

19 BY MR. BOWER:

20 Q. I'm not asking you whether you
21 remember the specific event. I'm asking you
22 whether this refreshes your recollection that
23 Ms. Cope was responsible for replenishment
24 for Schedule II narcotics during this time
25 period?

1 MS. FUMERTON: Objection, form.

2 A. I'm not sure if she was
3 responsible or if she had been assigned
4 something from Rae or someone else in
5 replenishment.

6 BY MR. BOWER:

7 Q. Can you -- do you have an
8 understanding as to how the replenishment
9 side of the business was organized?

10 MS. FUMERTON: Objection, form.

11 A. There was a replenishment
12 manager assigned to a buyer, and then
13 replenishment managers also had assignments
14 of certain manufacturers that they placed
15 orders for.

16 BY MR. BOWER:

17 Q. Okay. So while you were
18 responsible for buying Schedule II narcotics
19 and prescription opiates, who was the
20 replenishment manager that -- manager that
21 was assigned to you?

22 A. So it would change often when
23 they changed their assignments just like we
24 would vary and change categories.

25 Q. Okay. So who were the names of

1 the persons that were assigned to you over
2 time?

3 A. So the main one that I remember
4 towards the end was Linda. I think we saw
5 Rae had communicated some e-mails and then it
6 looks like Traci is on this, so...

7 Q. Okay. I'm just trying to get a
8 better sense of this side of the business
9 because you mentioned that you thought maybe
10 Rae had asked her to do this.

11 Was Rae above -- strike that.

12 Did Traci report to Rae?

13 A. I don't remember Traci
14 reporting to Rae, but Traci was a newer
15 replenishment manager at one time than some
16 of the others.

17 Q. Okay. And do you see in this
18 e-mail Mr. Cohen notes that: Overall, the
19 molecule has decreased 6% for the year.
20 Based on your new forecast shortages may have
21 led to a spike at Walmart.

22 Do you see that?

23 A. I see that.

24 Q. Do you agree that there was a
25 spike at Walmart for oxycodone 15 and 30?

1 MS. FUMERTON: Objection, form.

2 A. According to the numbers that I
3 see on here, this three months utilization
4 doesn't lead me to be concerned that there
5 was a spike at Walmart.

6 BY MR. BOWER:

7 Q. Okay. And where are you
8 looking?

9 A. I'm looking on the third page,
10 the warehouse pulls that Traci sent.

11 Q. Okay. Can you just, for the
12 record, refer to the numbers that you're
13 looking at?

14 MS. FUMERTON: Are you asking
15 for the Bates numbers or the
16 numbers --

17 MR. BOWER: No, just the
18 numbers she says -- she says according
19 to the numbers that I see on here.

20 MS. FUMERTON: Okay.

21 A. So if you look at the oxycodone
22 15-milligram tablet, there's 11,400
23 bottles -- 11,411, to be clear. From what I
24 can tell, that's indicated for March of 2012.

25 ///

1 BY MR. BOWER:

2 Q. Uh-huh.

3 A. Then there's 11,096 bottles for
4 April of 2012, which is actually a decrease
5 from March.

6 Q. Uh-huh.

7 A. And then you see an increase
8 again from May of 11,971 bottles.

9 And then the same thing for
10 oxycodone 30-milligram tablets.

11 Q. Uh-huh.

12 A. It appears that the number for
13 March 2012 is 15,181 bottles and it appears
14 the number for April is 14,847, and then it
15 appears the number for May 2012 is 16,410.

16 So those numbers don't lead me
17 to say that that's a spike in our business.

18 Q. Okay. So, for example, going
19 from 14,847 to 16,410 wouldn't be a spike
20 from your experience?

21 A. I would have to see more
22 information on what happened in April of
23 2012. We had declined as you can see from
24 March to April.

25 Q. Right. So it had declined

1 approximately 300 March to April?

2 A. 300 --

3 Q. 300 give or take, and then it
4 increases by 1700?

5 MS. FUMERTON: Objection, form.

6 A. I would need to look at more
7 purchase history to see exactly where we
8 shipped what we needed on those months or
9 what was happening. It sounds to me like
10 from his e-mail that there were out-of-stocks
11 in the industry, so I would need to see were
12 we being replenished fully in those months or
13 what happened in those months.

14 BY MR. BOWER:

15 Q. These numbers are not your
16 orders from Mr. Cohen, right? They are --
17 let's see. They are the usages, right?

18 MS. FUMERTON: Objection, form.

19 A. These are shipments from the
20 warehouse to the stores.

21 BY MR. BOWER:

22 Q. Right. And this is after that
23 Mr. Cohen and his -- his manufacturer has
24 already cut at least -- I'm sorry, has
25 already canceled at least one of Walmart's

1 orders, correct?

2 MS. FUMERTON: Objection, form.

3 A. I'd have to pull that up and
4 look at the month, but -- is that November?

5 BY MR. BOWER:

6 Q. Yeah. Why don't we take a
7 moment and look at that, and we can...

8 So turn to Exhibit 21 on page
9 ending in 805. You can see that that order
10 was canceled June 21st, 2012.

11 A. I do see that.

12 Q. Right? So Walmart had already
13 attempted to increase its orders but those
14 orders had been canceled, right?

15 MS. FUMERTON: Objection, form.

16 BY MR. BOWER:

17 Q. That's why Mr. Cohen is
18 referring to a spike, isn't it?

19 MS. FUMERTON: Objection, form.

20 A. I would need to -- I need to
21 reread what he said.

22 BY MR. BOWER:

23 Q. Oh, sure. Please, take your
24 time.

25 A. Because these numbers that

1 we're talking about were not June. We're
2 talking about March, April and May
3 utilization here.

4 Q. Right. And Walmart is trying
5 to get more product, right?

6 MS. FUMERTON: Objection, form.
7 She said she needed time to review the
8 document.

9 MR. BOWER: Okay.
10 (Document review.)

11 A. Okay.

12 BY MR. BOWER:

13 Q. Okay. So Walmart, when you're
14 looking at exhibits -- sorry, just give me a
15 second to get the right number -- 21 and 24.
16 In 21, Walmart places an order in June that's
17 canceled, correct?

18 A. That is correct.

19 Q. And therefore, those numbers --
20 that order is not reflected in the numbers on
21 Exhibit 24, correct?

22 MS. FUMERTON: Objection --

23 BY MR. BOWER:

24 Q. The numbers you read into the
25 record earlier?

1 MS. FUMERTON: Objection, form.

2 A. That canceled shipment is not
3 reflected in these numbers.

4 BY MR. BOWER:

5 Q. Okay. And so it could have
6 been that Mr. Cohen was referring to that
7 canceled shipment when he notes the spike at
8 Walmart, correct?

9 MS. FUMERTON: Objection, form.

10 A. I don't -- I don't know that I
11 can comment. I would be speculating on what
12 his -- on what he was thinking at the time
13 that he wrote the e-mail.

14 BY MR. BOWER:

15 Q. Well, you noted earlier that
16 you disagreed there was a spike, right?

17 A. If I look at these numbers, I
18 do not call that a spike in utilization based
19 off of 5,000 stores, no.

20 Q. Okay. And my question to you
21 is: If Mr. Cohen had been referring to
22 Walmart's canceled orders, including those in
23 his analysis, could he have been seeing a
24 spike at Walmart?

25 MS. FUMERTON: Objection, form.

1 A. I don't have our June numbers
2 to make a -- to make an assessment on the
3 June numbers.

4 BY MR. BOWER:

5 Q. Well, the June numbers would
6 reflect -- strike that.

7 What June numbers are you
8 thinking about? The product amount that
9 would have been ordered or the product amount
10 shipped from the warehouse?

11 MS. FUMERTON: Objection, form.

12 A. What had pulled from the
13 warehouse.

14 BY MR. BOWER:

15 Q. But those June numbers would
16 have reflected the canceled order by
17 Allergan, correct?

18 MS. FUMERTON: Objection, form.

19 MR. CIULLO: Objection.

20 BY MR. BOWER:

21 Q. Because -- well, in June,
22 Allergan canceled the Walmart order, right?

23 MS. FUMERTON: Objection, form.

24 MR. CIULLO: Objection.

25 A. There is one order that

1 Allergan -- or that Actavis canceled in June,
2 yes.

3 BY MR. BOWER:

4 Q. Well, there's one order we've
5 seen today, correct?

6 MS. FUMERTON: Objection, form.

7 BY MR. BOWER:

8 Q. You don't know whether there's
9 been more or not, do you?

10 MS. FUMERTON: Objection, form.

11 A. This e-mail points to one
12 order.

13 BY MR. BOWER:

14 Q. Right. You don't know whether
15 there were, in fact, more or not, do you?

16 MS. FUMERTON: Objection, form.

17 A. I do not. I do not have any
18 data regarding June.

19 BY MR. BOWER:

20 Q. Okay. So if, in fact, this
21 order had not been canceled and Walmart had
22 received an additional 5,102 units of oxy 30
23 in June, would those June numbers then
24 reflect a spike, based on your experience?

25 MS. FUMERTON: Objection, form

1 and lack of foundation.

2 A. I would need to look at that
3 number coupled with what the pulls were from
4 the warehouse to the store.

5 BY MR. BOWER:

6 Q. Okay. If you turn to, in the
7 same exhibit, 24, the page ending in 84. You
8 see another of Mr. Cohen's e-mails to you on
9 June 22nd?

10 A. Yes.

11 Q. And kind of the fourth sentence
12 down, he says: Looking at the Excel
13 spreadsheet versus open orders.

14 What does that refer to?

15 A. I can't be sure.

16 Q. You're the only one he's
17 writing to, right?

18 A. Yes.

19 Q. No one else on the e-mail?

20 A. That's correct.

21 Q. Okay. As you sit here today,
22 you don't know what the Excel spreadsheet
23 would be referring to?

24 MS. FUMERTON: Objection, form.

25 A. I don't recall.

1 BY MR. BOWER:

2 Q. And in the first sentence there
3 he notes that: Here is a snapshot of our oxy
4 shipments to Walmart.

5 Do you see that?

6 A. Yes.

7 Q. Does that maybe clarify in your
8 mind what Excel spreadsheet he would have
9 been looking at?

10 MS. FUMERTON: Objection, form.

11 A. That could be on the Excel
12 spreadsheet.

13 BY MR. BOWER:

14 Q. Indeed, he's comparing the
15 Excel spreadsheet versus open orders for
16 June, one of which was an order that was
17 canceled that same day, correct?

18 MS. FUMERTON: Objection, form,
19 lack of foundation.

20 A. I see that in the e-mail.

21 BY MR. BOWER:

22 Q. At some point around this time
23 period, did you become aware that Walmart, in
24 connection with its suspicious order
25 monitoring program, was cutting orders of oxy

1 30?

2 MS. FUMERTON: Objection, form.

3 MR. BOWER: I'll strike that.

4 BY MR. BOWER:

5 Q. Do you know whether Walmart
6 ever instituted -- ever instituted a policy
7 to cut orders of oxy 30 that were over 20
8 bottles?

9 MS. FUMERTON: Objection, form.

10 A. Yes, I'm aware of that.

11 BY MR. BOWER:

12 Q. Okay. And how did you become
13 aware of that?

14 A. I can't recall if it was a
15 conversation or if I was involved in a
16 meeting or...

17 (Walmart-Little Exhibit 25
18 marked.)

19 BY MR. BOWER:

20 Q. Okay. You've been handed
21 what's been marked as Exhibit 5.

22 MS. FUMERTON: 25.

23 MR. BOWER: 25, yeah. Did I
24 say 5?

25 MS. FUMERTON: Uh-huh.

1 MR. BOWER: Sorry.

2 BY MR. BOWER:

3 Q. Take a moment to review this.

4 I just -- I'm just going to ask you if this
5 refreshes your recollection of when you first
6 became aware of the policy to cut oxy orders
7 on more than 20 bottles of oxy 30.

8 MR. CIULLO: I'm sorry, can you
9 read the Bates.

10 MR. BOWER: Sure. This is a
11 Walmart document. The Bates number is
12 WMT_MDL_000037807 and 808.

13 MR. CIULLO: Thank you, sir.

14 MR. BOWER: Sure.

15 MS. FUMERTON: I'll just note
16 for the record that this document is
17 missing its attachment.

18 (Document review.)

19 BY MR. BOWER:

20 Q. Do you recall becoming aware on
21 or about this time period that Walmart was
22 instituting this policy?

23 MS. FUMERTON: Objection, form.

24 A. Yes.

25 ///

1 BY MR. BOWER:

2 Q. At this time, did you have an
3 understanding as to why Theresa Alford was
4 forwarding this e-mail to you?

5 A. I don't remember.

6 Q. Did Walmart's new policy have
7 an impact on how you conducted your side of
8 the business?

9 MS. FUMERTON: Objection, form.

10 A. It would not have impacted what
11 I did on my side of the business, no.

12 BY MR. BOWER:

13 Q. Have you ever looked back to
14 determine whether Walmart's decision to block
15 orders of more than 20 bottles of oxy 30
16 impacted the amount of oxy 30 you needed to
17 purchase?

18 A. I had not looked back at that,
19 no.

20 Q. Have you ever discussed that
21 with anybody?

22 A. Not that I recall.

23 Q. Did you ever attend any
24 meetings discussing this new policy?

25 MS. FUMERTON: Objection, form.

1 A. I can't remember if I was in a
2 meeting or not.

3 BY MR. BOWER:

4 Q. The e-mail that you're
5 forwarded notes that: The outline of the
6 program and changes include implementation of
7 C-II exception -- C-II order exception
8 review.

9 Do you see that?

10 A. I see that.

11 Q. Okay. The first bullet point
12 says: Blocks order of more than 20 bottles
13 of oxy 30.

14 Do you see that?

15 A. I see that.

16 Q. Does that suggest to you that
17 this was a new policy that Walmart was
18 instituting?

19 MS. FUMERTON: Objection, form.

20 A. Yes, it does.

21 BY MR. BOWER:

22 Q. Do you know, looking at the
23 third bullet point down from that -- from the
24 top of that page ending in 08, states:
25 MD review and follow-up on all C-II order

1 exceptions.

2 Do you see that?

3 A. I do see that.

4 Q. Do you know what that means,
5 MD review?

6 A. I'm not sure.

7 Q. Do you have any recollection of
8 there being some internal debate within
9 Walmart regarding whether this was an
10 appropriate policy to follow?

11 MS. FUMERTON: Objection, form.

12 A. I don't recall that.

13 BY MR. BOWER:

14 Q. Do you recall any discussions
15 about the impact of this policy?

16 MS. FUMERTON: Objection, form.

17 A. I don't recall.

18 (Walmart-Little Exhibit 26
19 marked.)

20 BY MR. BOWER:

21 Q. Okay. You've been handed
22 what's been marked as Exhibit 26. This is a
23 rather lengthy e-mail chain, but you are
24 copied on many of the e-mails. Just take a
25 moment to review, and I just have some

1 questions on this.

2 The Bates number for this one
3 is WMT_MDL_000033418 through 33424.

4 (Document review.)

5 BY MR. BOWER:

6 Q. Are you ready?

7 MS. FUMERTON: She's still
8 reading.

9 A. I'm not.

10 MR. BOWER: Okay. Sorry.

11 (Document review.)

12 (Telephonic interruption.)

13 (Comments off the stenographic
14 record.)

15 MR. BOWER: Can we go off the
16 record.

17 THE VIDEOGRAPHER: Going off
18 the record, 4:09 p.m.

19 (Discussion off the record.)

20 THE VIDEOGRAPHER: Back on
21 record, 4:10 p.m.

22 BY MR. BOWER:

23 Q. Have you finished reviewing the
24 document --

25 A. I have.

1 Q. -- Exhibit 26?

2 Do you recall receiving this
3 e-mail?

4 A. I don't recall.

5 Q. You don't recall that as you
6 sit here today?

7 A. (Shakes head.)

8 Q. Was it not a significant issue
9 for you at the time?

10 MS. FUMERTON: Objection, form.

11 A. This wasn't something that
12 would have affected what I did on a daily
13 basis. There were other groups that were
14 involved in this.

15 BY MR. BOWER:

16 Q. Okay. Well, Sandy added you to
17 this e-mail chain, correct?

18 A. That is correct.

19 Q. Do you have any understanding
20 as to why she added you?

21 MS. FUMERTON: Objection, form.

22 A. She always wanted to ensure if
23 there was a subject that fell under our
24 categories, that we were at least looped in
25 to understand what was happening.

1 BY MR. BOWER:

2 Q. Okay. Well, if you note, she
3 writes: We should include Patsy Little, Bart
4 Grisham, David Atwood and Larry Kirkpatrick
5 in the meeting as they all play a vital role
6 in the solution.

7 Do you see that?

8 MS. FUMERTON: She wasn't
9 looking at whatever page you're
10 looking at.

11 BY MR. BOWER:

12 Q. Okay. Sorry, I'm looking at
13 the top of page ending in 20. I apologize
14 for that.

15 A. Yes, I see that.

16 Q. Do you disagree with her
17 statement that you played a vital role in the
18 solution?

19 A. I think I needed to understand
20 what was happening in my category.

21 Q. Okay. And did you at some
22 point come to that understanding?

23 A. I had an understanding or --
24 from these notifications of what was
25 happening.

1 Q. And what was happening?

2 A. That they were cutting those
3 orders for stores that were over an excess of
4 20 bottles.

5 Q. And what was that a solution
6 to? What was the problem?

7 MS. FUMERTON: Objection, form.

8 BY MR. BOWER:

9 Q. Well, I just direct you to the
10 first statement that Sandy makes: After a
11 brief discussion with you and Susan last
12 week, I recognize we have an opportunity to
13 curb inappropriate dispensing of oxy.

14 Do you see that, top of that
15 same page in that same e-mail?

16 A. Yes, I see that.

17 Q. So the solution to the problem
18 was to curb -- the problem was the
19 inappropriate dispensing of oxy, correct?

20 MS. FUMERTON: Objection, form.

21 A. I see what the e-mail says
22 here.

23 BY MR. BOWER:

24 Q. Do you disagree with the
25 statement Sandy is making?

1 MS. FUMERTON: Objection, form.

2 A. I don't know that I had
3 knowledge of what was happening on the
4 dispensing side.

5 BY MR. BOWER:

6 Q. Okay. Certainly Sandy appears
7 to have knowledge, correct?

8 MS. FUMERTON: Objection, form.

9 A. I see her statement in the
10 e-mail.

11 BY MR. BOWER:

12 Q. Okay. Do you disagree with her
13 statement that you would play a vital role in
14 the solution?

15 MS. FUMERTON: Objection, form.

16 A. I disagree that I would play a
17 vital role in what was happening here with
18 the cutting of the oxy orders.

19 BY MR. BOWER:

20 Q. Were there any other possible
21 solutions Walmart could have implemented to
22 inappropriate dispensing of oxy?

23 MS. FUMERTON: Objection, form.

24 A. I don't recall being in any
25 conversations regarding that with

1 other options.

2 BY MR. BOWER:

3 Q. Do you recall ever attending a
4 meeting where this was discussed?

5 A. I don't recall attending a
6 meeting.

7 Q. Do you know whether one
8 occurred without your attendance?

9 A. I just -- I can't remember.

10 Q. Did you ever have any
11 discussions with Sandy after she added you to
12 this e-mail chain?

13 MS. FUMERTON: Objection, form.

14 MR. BOWER: Strike that.

15 BY MR. BOWER:

16 Q. Did you ever have any
17 discussions with Sandy about this topic after
18 she added you to this e-mail chain?

19 A. I can't recall.

20 Q. None that you recall
21 specifically; is that correct?

22 A. There's nothing I recall
23 specifically.

24 Q. You notice the discussion goes
25 on, right, with several e-mails from Bart.

1 Who is Bart Grisham?

2 A. Bart was in our replenishment
3 department at the time.

4 Q. Was he another one of the folks
5 responsible for replenishment of prescription
6 opiates?

7 MS. FUMERTON: Objection, form.

8 A. Bart led the replenishment
9 department.

10 BY MR. BOWER:

11 Q. Okay. Do you recall the time
12 period for which he led the replenishment
13 department, or approximate time period?

14 A. I do not.

15 Q. Do you recall whether Bart was
16 still in that position when you left Walmart?

17 A. When I left Walmart?

18 Q. Yeah.

19 A. He was not still in that
20 position.

21 Q. Okay. Who held that position
22 when you left? Was that Linda Wilson?

23 A. No, Linda was not over
24 replenishment.

25 Q. Okay.

1 A. I don't remember the name of
2 the gentleman that was over that department
3 at the time.

4 Q. Okay. Okay. Do you see in
5 Bart's e-mail to yourself and others on the
6 bottom of page ending in 418, he refers to a
7 data source for orders that were cut due to
8 maximum order quantity could be obtained.

9 Do you see that?

10 A. I see that.

11 Q. Do you know what data source he
12 is referring to?

13 A. I do not.

14 Q. Well, you're one of four people
15 on that e-mail, right?

16 MS. FUMERTON: Objection, form,
17 misstates the document.

18 BY MR. BOWER:

19 Q. Well, the e-mail is from Bart
20 Grisham to Ms. Hiland, Mr. Worth, Sandy
21 Kinsey and yourself, right, cc'ing Paul
22 Beahm, Tim Harris and Ramona Sullins,
23 correct?

24 A. That is correct.

25 Q. Okay. And as you sit here

1 today, you're not familiar with the data
2 source he's referring to; is that correct?

3 A. That is correct.

4 Q. Do you know who may be familiar
5 with that data source other than Bart?

6 A. I don't know.

7 Q. Did you ever go to Sandy and
8 say, hey, Sandy, what data source was he
9 talking about?

10 A. I did not.

11 Q. No? Just didn't concern you at
12 the time?

13 MS. FUMERTON: Objection, form.

14 A. This would not have affected
15 what I needed to do on a daily basis.

16 BY MR. BOWER:

17 Q. I didn't ask whether it
18 would -- affected what you needed to do on a
19 daily basis.

20 I'm just simply asking whether
21 this concerned you at the time.

22 MS. FUMERTON: Objection, form.

23 BY MR. BOWER:

24 Q. Right, folks at Walmart are
25 concerned about this new policy, how it might

1 impact its business, right, in connection
2 with the problems with oxycodone abuse.

3 Did they concern you at all?

4 MS. FUMERTON: Objection, form.

5 A. I always have a personal
6 concern for anyone who is not taking a
7 medication the way they should take a
8 medication.

9 The position that I held at
10 Walmart, my focus on a daily basis was to
11 ensure that I negotiated the best prices at
12 Walmart and had supply in the warehouse of
13 both pain medications as well as other
14 medications.

15 BY MR. BOWER:

16 Q. And I appreciate that position,
17 and I understand it. And I'm just trying to
18 understand that in light of that concern and
19 in light of Sandy's e-mail that suggests that
20 you play a vital role in the solution, did
21 you do anything?

22 MS. FUMERTON: Objection, form.

23 A. I did not participate in -- I
24 had nothing to do with this.

25 ///

1 BY MR. BOWER:

2 Q. Okay. If you go up a couple of
3 e-mails up, e-mail from Paul Beahm, do you
4 know what his position was at the time?

5 A. Paul Beahm was the vice
6 president of operations, I believe at this
7 time, pharmacy operations.

8 Q. Okay. And you note he raises
9 some concerns about whether this was the
10 appropriate avenue. You see that?

11 MS. FUMERTON: Where? Oh.

12 Objection. I'm sorry.

13 BY MR. BOWER:

14 Q. I'll just read his statement.
15 He says: Sandy, I agree that getting all
16 thoughts on the table is the appropriate
17 avenue.

18 Do you see that?

19 A. I see that.

20 BY MR. BOWER:

21 Q. Okay. The commitment to serve
22 our patients is foremost on our mind and
23 potentially preventing pharmacies from losing
24 their ability to serve their patients by not
25 losing their controlled licenses.

1 Do you see that?

2 A. I see that.

3 Q. He was concerned about
4 pharmacies losing their licenses, wasn't he?

5 MS. FUMERTON: Objection, form.

6 A. I see the statement in the
7 e-mail.

8 BY MR. BOWER:

9 Q. Do you have any reason to
10 disagree that he was concerned about that?

11 MS. FUMERTON: Objection, form,
12 lack of foundation.

13 A. I don't.

14 BY MR. BOWER:

15 Q. Okay. And he recognizes that
16 Walmart is in the business of selling
17 products and services and we want to sell all
18 we can, right?

19 MS. FUMERTON: Objection, form.

20 A. I see the statement in the
21 e-mail.

22 BY MR. BOWER:

23 Q. And he was concerned that
24 Walmart's cutting -- cutting the ability of
25 pharmacies to get oxy was preventing them

1 from selling all they could for oxy, right?

2 MS. FUMERTON: Objection, form,
3 misstates the document.

4 BY MR. BOWER:

5 Q. Well, the document: Says We
6 want to sell all we can. Right?

7 MS. FUMERTON: Objection, form,
8 and if you're going to say what the
9 document says, you should read the
10 entire sentence.

11 BY MR. BOWER:

12 Q. Okay. Clearly you
13 understand -- and I'll rephrase.

14 Mr. Paul Beahm writes: Clearly
15 you understand that we are in the business of
16 selling products and services and we want to
17 sell all we can in a compliant and
18 responsible way. Right?

19 A. I see that.

20 Q. And he's concerned that if you
21 don't do so, Walmart might lose their
22 controlled licenses, right?

23 MS. FUMERTON: Objection, form.

24 BY MR. BOWER:

25 Q. Well, do you disagree that if

1 Walmart does not sell its CS and controlled
2 substances in a compliant and responsible
3 way, that it could lose its controlled
4 licenses?

5 MS. FUMERTON: Objection, form.

6 A. Yes, I agree.

7 BY MR. BOWER:

8 Q. Okay. So Walmart needed to
9 make some changes to ensure that wouldn't
10 happen, right?

11 MS. FUMERTON: Objection, form.

12 A. I see that being discussed in
13 the e-mail.

14 BY MR. BOWER:

15 Q. Okay. Other than the decision
16 to cut oxy 30 orders to 20 bottles, are you
17 familiar with any other policy that was put
18 in place in connection with Walmart's
19 suspicious order monitoring program?

20 MS. FUMERTON: Objection, form.

21 A. I'm not -- I'm not familiar
22 with the policies around the suspicious order
23 monitoring.

24 BY MR. BOWER:

25 Q. Okay.

1 (Walmart-Little Exhibit 27
2 marked.)

3 BY MR. BOWER:

4 Q. You've been handed what's been
5 marked as Exhibit 27. It's a Walmart
6 document ending in Bates number 25900. It's
7 a one-page document. Just take your time and
8 let me know when you're done.

9 I can tell you my questions
10 will be focused on paragraph 4, if that
11 helps.

12 A. Okay.

13 (Document review.)

14 BY MR. BOWER:

15 Q. Are you ready?

16 A. I'm ready.

17 Q. I note that Exhibit 26, which
18 is the e-mail chain we were discussing, was
19 in August 2012. This is the same month,
20 correct?

21 A. That is correct.

22 Q. Walmart has just instituted its
23 decision to cut orders over 20, right?

24 MS. FUMERTON: Objection, form.

25 MR. BOWER: I'll strike that.

1 BY MR. BOWER:

2 Q. Walmart has just instituted its
3 policy of cutting orders of oxy 30 to more
4 than 20 bottles per month, correct?

5 MS. FUMERTON: Objection, form.

6 MR. BOWER: What's the nature
7 of your objection?

8 MS. FUMERTON: I think it
9 misrepresents the document.

10 MR. BOWER: I'm not asking
11 about the document.

12 MS. FUMERTON: Well, no, you
13 are, because you're saying that it's
14 just afterwards and then you're
15 referring to --

16 BY MR. BOWER:

17 Q. So the record is clear, my
18 question is this: Walmart has just
19 instituted the policy of cutting orders of
20 oxy 30 to more than 20 bottles per month per
21 pharmacy, correct?

22 MS. FUMERTON: And I'm
23 objecting to the form.

24 A. I believe it's 20 bottles per
25 week, but I would have to verify that.

1 BY MR. BOWER:

2 Q. So as you sit here today, do
3 you know what the policy was?

4 MS. FUMERTON: Objection, form.

5 BY MR. BOWER:

6 Q. And I may be mistaken, you may
7 be right. I'm not trying to fool you. I
8 just --

9 A. Stores received one C-II order
10 per week from the warehouse.

11 Q. Okay. You're right, 20 bottles
12 per week.

13 A. 20 bottles per week.

14 Q. Okay. So Walmart has just, in
15 August 2012, instituted that policy of
16 limiting orders to 20 bottles of oxy 30 per
17 week per pharmacy, correct?

18 A. That's correct.

19 Q. Okay. And in that same month,
20 Walmart is representing and warranting to
21 Mallinckrodt that it has in place a
22 suspicious order monitoring policy as
23 required by 21 CFR Section 1301.74(b).

24 Do you see that?

25 A. I see that.

1 Q. And this Mallinckrodt contract
2 is directed to yourself, correct?

3 A. Yes, it is.

4 Q. Did you do anything at this
5 time to ensure that Walmart had a compliant
6 suspicious order monitoring program?

7 MS. FUMERTON: Objection, form.

8 A. I was aware that we had a
9 suspicious order monitoring program, and I
10 could contact the manufacturer with that
11 department if I needed to.

12 BY MR. BOWER:

13 Q. Did Walmart do anything at this
14 point to confirm its representations and
15 warranties to Mallinckrodt?

16 MS. FUMERTON: Objection, form.

17 A. I don't recall doing anything.

18 BY MR. BOWER:

19 Q. And to the best of your
20 recollection, the only policy in place at
21 this point was the cut 20 policy, correct?

22 MS. FUMERTON: Objection, form.

23 A. To my knowledge there was a
24 broader suspicious order monitoring program
25 in place, and the cutting to 20 bottles a

1 week was a portion or was a different -- I
2 think there was an overall suspicious order
3 monitoring department and program in place
4 that I don't know the specifics of.

5 BY MR. BOWER:

6 Q. Okay. What's your
7 understanding of that department?

8 MS. FUMERTON: Objection, form.

9 BY MR. BOWER:

10 Q. I'm just using -- you said
11 there was an overall suspicious order
12 monitoring department. Who was in that
13 department?

14 A. Miranda was in that department,
15 and I'm unsure of who else was in that
16 department.

17 Q. Okay. And other than the cut
18 20 policy, any other policies you're familiar
19 with that department implemented to carry out
20 its suspicious order monitoring obligations?

21 MS. FUMERTON: Objection, form,
22 asked and answered.

23 THE WITNESS: I'm sorry?

24 MR. BOWER: You can answer.

25 THE WITNESS: Oh.

1 A. I'm not familiar with their
2 policies and procedures.

3 BY MR. BOWER:

4 Q. Did you ever attend any DEA
5 meetings regarding suspicious order
6 monitoring for prescription opiates?

7 A. I went to a meeting in
8 Little Rock with the warehouse group and some
9 others.

10 Q. Did you discuss suspicious
11 order monitoring for Schedule II narcotics at
12 that meeting?

13 A. I don't remember the discussion
14 at the meeting.

15 (Walmart-Little Exhibit 28
16 marked.)

17 BY MR. BOWER:

18 Q. Okay. You've been handed
19 what's been marked as Exhibit 28. It's a
20 Walmart document ending in 21757 through 59.
21 It's a two-page e-mail. Let me know when you
22 finish reviewing.

23 A. Okay.

24 (Document review.)

25 ///

1 BY MR. BOWER:

2 Q. Are you ready?

3 A. Yes.

4 Q. Does this refresh your
5 recollection whether you attended a DEA
6 meeting to discuss suspicious order
7 monitoring?

8 MS. FUMERTON: Objection, form.

9 MR. BOWER: What's the nature
10 of the objection?

11 MS. FUMERTON: The purpose --
12 it's vague because you're saying that
13 she did attend it to discuss this
14 reason as opposed to attending the
15 meeting, which is what she testified
16 to before.

17 MR. BOWER: You can answer.

18 A. I attended the meeting as the
19 buyer of C-II products.

20 BY MR. BOWER:

21 Q. And prescription opiates were
22 discussed at the meeting, correct?

23 A. That is correct.

24 Q. Okay. Do you recall receiving
25 any documents at the meeting?

1 A. I do not recall.

2 Q. And just so the record is
3 clear, do you not recall one way or the other
4 whether you received documents or not; is
5 that correct?

6 A. I do not recall one way or the
7 other.

8 Q. If you know -- let's just start
9 from the bottom of Ms. Johnson's notes on the
10 second page of the document.

11 Do you recall reviewing
12 specific stores highlighted?

13 A. I do not remember.

14 Q. You don't remember Walmart
15 stores being highlighted for potential
16 problems with opioid prescriptions?

17 MS. FUMERTON: Objection, form.

18 A. I do not remember.

19 BY MR. BOWER:

20 Q. Do you see a couple of bullet
21 points up, oxycodone distribution almost
22 doubled from 2013 to '14?

23 Do you see that?

24 A. Yes, I see that.

25 Q. Do you recall being concerned

1 when you were presented with that
2 information?

3 MS. FUMERTON: Objection, form.

4 A. I don't remember.

5 BY MR. BOWER:

6 Q. You don't remember being
7 concerned; is that correct?

8 A. I don't remember the specifics
9 of the meeting.

10 Q. Do you remember generally the
11 meeting?

12 A. I remember going to the
13 meeting. I don't remember the specifics of
14 the meeting.

15 Q. Did you ever have any
16 discussions with anybody after the meeting
17 about the concerns raised by the DEA?

18 MS. FUMERTON: Objection, form.

19 A. I did not.

20 BY MR. BOWER:

21 Q. Do you see the DEA provided an
22 educational session to the folks at Walmart
23 on the first page there?

24 A. Yes, I see.

25 Q. Do you recall what that -- what

1 was included in that presentation?

2 A. I do not.

3 Q. Do you recall the format of the
4 presentation?

5 A. I do not.

6 Q. Do you recall whether it was on
7 a PowerPoint or whether it was documents were
8 handed?

9 A. I do not.

10 Q. Okay. Do you recall the
11 discussion of the prescription drug abuse and
12 a general overview of the problem?

13 A. I don't remember specifics to
14 the meeting.

15 Q. And nothing on this document is
16 refreshing your recollection about the
17 meeting?

18 A. No.

19 Q. And if you go back to the
20 second page again, it appears there's
21 discussion of red flags.

22 Do you see that? Kind of
23 towards the top there after Know Your
24 Customer?

25 A. Yes, I see that.

1 Q. You see it says red flags?

2 A. Uh-huh.

3 Q. You see the same red flags that
4 we're familiar with. Do you know what that
5 refers to?

6 A. I do not.

7 Q. No?

8 Is the reason that you weren't
9 concerned about this meeting is because it
10 didn't impact the side of your business?

11 MS. FUMERTON: Objection, form.

12 MR. BOWER: Strike that.

13 BY MR. BOWER:

14 Q. What was the reason this
15 meeting didn't concern you?

16 MS. FUMERTON: Objection, form.

17 MR. BOWER: I'll rephrase.

18 That's a bad question.

19 BY MR. BOWER:

20 Q. You attended this meeting,
21 correct? You don't dispute that?

22 A. I attended the meeting.

23 Q. Do you know why you attended
24 the meeting?

25 A. I was invited to attend as the

1 buyer of the pain category.

2 Q. And who were you invited to
3 attend by?

4 A. I don't remember specifically.

5 Q. Do you recall how you were
6 notified that the meeting was going to occur?

7 A. I think it was just a
8 conversation, but I don't remember
9 specifically.

10 Q. Did you have any discussions
11 with anyone prior to the meeting?

12 A. I did not.

13 Q. Was this unusual -- strike
14 that.

15 Would this have been unusual
16 for you to attend a meeting with the DEA
17 about prescription opioid abuse?

18 MS. FUMERTON: Objection, form.

19 A. I don't think so.

20 BY MR. BOWER:

21 Q. That wouldn't have been
22 unusual? Is that your testimony?

23 MS. FUMERTON: Objection, form.

24 A. It wouldn't have been unusual
25 for me to attend a meeting for an overarching

1 subject that had to do with my categories.

2 BY MR. BOWER:

3 Q. Have you ever attended a
4 meeting with the DEA other than this one?

5 A. Not that I recall.

6 Q. So it was unusual, correct?

7 MS. FUMERTON: Objection, form.

8 BY MR. BOWER:

9 Q. That's the only time it
10 happened, right?

11 MS. FUMERTON: Objection, form.

12 A. Yes. It was the only time it
13 happened.

14 BY MR. BOWER:

15 Q. A little bit unusual, right?

16 MS. FUMERTON: Objection, form,
17 asked and answered.

18 A. It's not unusual for us to
19 attend all sorts of different meetings. We
20 attend lots of meetings as buyers at Walmart
21 for -- with many different groups.

22 BY MR. BOWER:

23 Q. So in your experience in
24 attending lots of meetings, was a meeting
25 with the DEA similar to any other meeting?

1 MS. FUMERTON: Objection, form.

2 A. It was a similar meeting to --
3 as far as we were participants and they were
4 presenting.

5 BY MR. BOWER:

6 Q. Well, they were presenting on a
7 pretty important issue, weren't they?

8 MS. FUMERTON: Objection, form.

9 BY MR. BOWER:

10 Q. Let me ask you this: Do you
11 agree that this issue that was discussed at
12 this meeting was an important one?

13 MS. FUMERTON: Objection, form.

14 MR. BOWER: What's the nature
15 of that objection?

16 MS. FUMERTON: "This issue."
17 There's several issues that were
18 discussed at the meeting.

19 MR. BOWER: All right. Let's
20 break them down.

21 BY MR. BOWER:

22 Q. Do you agree that the
23 discussion of prescription drug abuse was an
24 important discussion?

25 A. Yes, I do.

1 Q. Do you agree that discussion of
2 pain clinics was an important discussion?

3 MS. FUMERTON: Objection, form.

4 A. Yes, I do.

5 BY MR. BOWER:

6 Q. What about the migration of
7 clinics from Florida to Georgia to Tennessee
8 to Kentucky to Ohio to Missouri, was that
9 important?

10 MS. FUMERTON: Objection, form.

11 A. Yes, I do.

12 BY MR. BOWER:

13 Q. Did you ever go back and look
14 at Walmart's data to see whether, wow, this
15 might be happening in our pharmacies?

16 A. I did not.

17 Q. No.

18 What about -- turn to the
19 second page. Do you agree it's important,
20 the discussion about oxycodone distribution
21 almost doubling from 2013 to 2014?

22 MS. FUMERTON: Objection, form,
23 lack of foundation.

24 MR. BOWER: Well, I'll strike
25 that.

1 BY MR. BOWER:

2 Q. Do you see the bullet points
3 from Ms. Johnson's notes in the meeting state
4 that oxycodone distribution almost doubled
5 from 2013 to 2014?

6 Do you see that?

7 MS. FUMERTON: Objection, form.

8 A. I do see that.

9 BY MR. BOWER:

10 Q. Do you disagree that was
11 important?

12 MS. FUMERTON: Objection, form,
13 lack of foundation.

14 A. That is important.

15 BY MR. BOWER:

16 Q. By this time you were aware
17 that there was an opioid crisis, were you
18 not?

19 MS. FUMERTON: Objection, form,
20 asked and answered.

21 BY MR. BOWER:

22 Q. Well, now we're in August 2015,
23 right?

24 A. I know that there's suspicious
25 order monitoring in place and these are

1 things that other departments in Walmart are
2 reviewing and paying attention to.

3 Q. Okay. So you relied on them to
4 review and pay attention to this; is that
5 correct?

6 MS. FUMERTON: Objection, form.

7 A. That is accurate.

8 BY MR. BOWER:

9 Q. After this meeting, did you do
10 anything differently with respect to the
11 buying side of the business?

12 A. I did not.

13 Q. Were there any discussions
14 about potentially changing the way you did
15 business?

16 MS. FUMERTON: Objection, form.

17 A. These things wouldn't have
18 played into me trying to get lower cost of
19 goods or ensuring that we had product at the
20 distribution center.

21 BY MR. BOWER:

22 Q. Right. Because those were your
23 goals from your perspective, right, lower
24 cost of goods and ensuring availability of
25 product, correct?

1 A. Those were two of the main
2 things that I focused on in my position.

3 MR. BOWER: Why don't we take a
4 break.

5 MS. FUMERTON: Okay.

6 THE VIDEOGRAPHER: Going off
7 the record, 4:37 p.m.

8 (Recess taken, 4:37 p.m. to
9 4:52 p.m.)

10 THE VIDEOGRAPHER: Back on
11 record at 4:51 p.m.

12 BY MR. BOWER:

13 Q. All right. Ms. Little, we're
14 back on the record. We'll try to finish up
15 here, do the best we can.

16 (Walmart-Little Exhibit 29
17 marked.)

18 BY MR. BOWER:

19 Q. Exhibit 29. And I'll just
20 note -- you take your time to review it.
21 I'll just note that I don't have really any
22 questions regarding the substance of the
23 attachments or anything. I'm just trying to
24 figure out how this document or this e-mail
25 got to you and why you sent it to

1 Ms. Spruell.

2 MS. FUMERTON: Still take time
3 to make sure you understand.

4 MR. BOWER: Yeah, yeah, please
5 do. I just -- I'm not going to be
6 asking, I don't think, any questions
7 on the attachments.

8 (Document review.)

9 BY MR. BOWER:

10 Q. Are you ready?

11 A. I'm not ready.

12 Q. And I'll note again, I'm just
13 asking you about the first page of the
14 document, so tell me when you've had a chance
15 to review that, okay?

16 (Document review.)

17 A. Okay.

18 BY MR. BOWER:

19 Q. Okay. Do you at some point
20 recall receiving an e-mail from the folks at
21 QualiTest regarding the annual review
22 reminder?

23 A. I do not.

24 Q. Okay. Is it possible you were
25 bcc'd on the e-mail from Aimee Cooper to Eric

1 Brantley?

2 A. I'm unsure.

3 Q. You're unsure? Well, how did
4 this e-mail come to you?

5 MS. FUMERTON: Zach, the Bates
6 numbers are out of order. I don't
7 know if that's -- I don't know why.

8 MR. BOWER: I'm not sure
9 either, but it's Walmart's production.

10 MR. FAUVRE: Could we get the
11 Bates number on the document?

12 MR. BOWER: Sure. It starts in
13 7254 -- the e-mail -- you want to just
14 do the e-mail?

15 MS. FUMERTON: Okay. Look, I
16 don't know what this is. I have no
17 personal knowledge and I don't know if
18 it's on our end. My next question is
19 do you have a question with the
20 e-mail, because I do see like it
21 looks -- it looks a little off with
22 the numbers.

23 MR. BOWER: Right, right.

24 MS. FUMERTON: I'm just
25 wondering if this is an attachment.

1 I'm just saying it's a possibility.

2 MR. BOWER: E-mailed an
3 attachment?

4 MS. FUMERTON: Yeah. The
5 attachments got out of order.

6 MR. BOWER: My questions are
7 only on the pages ending in 7245 and
8 7246, and I'm just trying to figure
9 out how this --

10 MR. FAUVRE: Can we get the
11 full Bates number, please?

12 MR. BOWER: Who is that on the
13 phone?

14 MR. FAUVRE: This is David
15 Fauvre for Endo and Par. Can we get
16 the full Bates numbers?

17 MS. FUMERTON: Yeah, David, it
18 starts 245 -- well...

19 MR. BOWER: I believe it was in
20 your hard copy production. That might
21 explain it.

22 MR. FAUVRE: What's the prefix?

23 MR. BOWER: Prefix is a Walmart
24 document, WMT_MDL.

25 MS. FUMERTON: I don't know.

1 MR. BOWER: Okay. Well, why
2 don't -- look, I'm not going to ask
3 any questions.

4 MS. FUMERTON: That's fine.

5 MR. BOWER: Why don't we just
6 leave it as it is. I don't think
7 there's anything controversial in it.

8 BY MR. BOWER:

9 Q. My only question is: Do you
10 have any recollection as to why you would be
11 sending this request, if you received one,
12 regarding annual SOM review to Kristy
13 Spruell? Do you see the e-mail at the top
14 from Patsy Little to Kristy Spruell?

15 A. I see the e-mail at the top.

16 Q. And you see it's on December 7,
17 2015?

18 A. Yes, I see that.

19 Q. Right. And that's the same day
20 that Ms. Amy Cooper sends an e-mail to Eric
21 Brantley with the same subject matter, right?

22 A. Yes.

23 Q. So it's possible that you were
24 bcc'd on the e-mail from Amy to Eric?

25 A. I'm not sure. I can't tell

1 from the document.

2 Q. I realize that. That's why I'm
3 asking you as you're the witness here today.

4 So do you have any
5 understanding or recollection as to why you
6 sent this to Kristy Spruell?

7 MS. FUMERTON: I object to the
8 question because I think the document
9 is just so confused.

10 MR. BOWER: All right.

11 MS. FUMERTON: I just note it
12 says produced in native format,
13 actually, the first Bates number, so I
14 don't think it's a hard copy
15 production.

16 BY MR. BOWER:

17 Q. Again, looking at the first
18 page of the document ending in 7245, an
19 e-mail from yourself to Kristy Spruell, you
20 see that? I'm just trying to understand why
21 you were sending this to Ms. Spruell. That's
22 my only question.

23 MS. FUMERTON: I think my
24 objection to the question is what
25 "this" is.

1 BY MR. BOWER:

2 Q. Why are you forwarding this
3 e-mail regarding annual review reminder to
4 Ms. Spruell?

5 MS. FUMERTON: And just object
6 to the form, the lack of foundation.

7 BY MR. BOWER:

8 Q. Who was Ms. Spruell?

9 A. Ms. Spruell worked -- I
10 don't -- I can't remember if she worked on
11 the warehousing team or on Miranda's team.

12 Q. Okay. If she had worked on
13 Miranda's team, would that have been a reason
14 that you would have sent her this request for
15 an annual review reminder?

16 MS. FUMERTON: Objection, form.

17 A. Yes, that would have been the
18 reason.

19 BY MR. BOWER:

20 Q. Okay. Thank you.

21 (Walmart-Little Exhibit 30
22 marked.)

23 BY MR. BOWER:

24 Q. You've been handed what's been
25 marked as Exhibit 30, which I note is a

1 Mallinckrodt document, MNK-T1_0004830712. I
2 don't believe this was produced by Walmart.

3 It's an e-mail from yourself to
4 Mallinckrodt LLC - Bonnie New.

5 Do you see that?

6 A. I do see that.

7 Q. And this was sent from your
8 iPhone correct?

9 A. It --

10 Q. At least it indicates that,
11 right?

12 A. Yes.

13 Q. Okay. Who is Bonnie New?

14 A. Bonnie was our account
15 representative at Walmart -- I mean at
16 Mallinckrodt.

17 Q. Okay. And what does that mean,
18 she was your account representative?

19 A. She represented Mallinckrodt to
20 Walmart.

21 Q. And what capacity did she
22 represent Mallinckrodt?

23 A. She was my contact at
24 Mallinckrodt. She would -- she was a
25 national account director. I'm not sure what

1 her title was.

2 Q. Would she notify you when new
3 products would become available?

4 A. Yes, she would.

5 Q. The subject of your e-mail is
6 Oxycodone Marketing Plan.

7 Do you see that?

8 A. Yes, I do.

9 Q. This is in 2016, correct?

10 A. Yes, it is.

11 Q. Okay. Is there any reason why
12 you're e-mailing her about oxycodone
13 marketing plan in 2016?

14 A. Well, it looks like George was
15 asking me a question, who was my VP's boss,
16 and so I must have been following up on a
17 question that he was asking me. I don't
18 remember.

19 Q. And who was George? What's his
20 full name?

21 A. George Riedl.

22 Q. How do you spell his last name?

23 A. I think it's R-I-D-E-L [sic].

24 Q. Do you recall what he was
25 asking about with respect to oxycodone

1 marketing plan?

2 A. Not offhand, I don't.

3 Q. Well, it's just you on this
4 e-mail, you're the only one from Walmart,
5 right?

6 A. Yes, I'm the only one on the
7 e-mail.

8 Q. As you sit here today, you
9 don't recall what this e-mail was about?

10 A. I do not. I didn't do an
11 oxycodone marketing plan with Mallinckrodt,
12 so I'm unsure of what the question George was
13 asking me.

14 Q. Do you know why George would be
15 asking you about an oxycodone marketing plan
16 in 2016?

17 MS. FUMERTON: Objection, form,
18 lack of foundation.

19 BY MR. BOWER:

20 Q. We'd have to ask George,
21 wouldn't we?

22 MS. FUMERTON: Objection, form.
23 You've asked two questions and she
24 hasn't answered.

25 MR. BOWER: I'll rephrase.

1 BY MR. BOWER:

2 Q. Do you think George would
3 recall what he was asking you?

4 MS. FUMERTON: Objection, form.

5 A. I'm not sure.

6 BY MR. BOWER:

7 Q. Well, your question is actually
8 a little bit more specific, right? You're
9 asking: Can you outline what this looks like
10 to physicians, right?

11 MS. FUMERTON: Objection, form.

12 BY MR. BOWER:

13 Q. You're asking -- I'll strike
14 that.

15 In this e-mail you're asking
16 Mallinckrodt specifically what their
17 oxycodone marketing plan looks like to
18 physicians, correct?

19 MS. FUMERTON: Objection, form.

20 A. I don't know if Mallinckrodt
21 had an oxycodone marketing plan for
22 physicians. I -- without seeing what George
23 asked me, I'm not clear on what this is.

24 BY MR. BOWER:

25 Q. Well, the e-mail speaks for

1 itself, right? You're asking Mallinckrodt
2 about what their oxycodone marketing plan
3 looks like to physicians.

4 Do you disagree with that?

5 MS. FUMERTON: Objection, form.

6 A. I see that in the e-mail.

7 BY MR. BOWER:

8 Q. Do you disagree you're asking
9 Mallinckrodt this question?

10 MS. FUMERTON: Objection, form.

11 A. Ask -- it's in the e-mail.

12 BY MR. BOWER:

13 Q. You sent it, right?

14 A. I sent the e-mail.

15 Q. Do you recall sending it?

16 A. I do not.

17 Q. Do you recall having any
18 conversations with George about marketing to
19 physicians for oxycodone?

20 A. I do not.

21 Q. Do you recall receiving a
22 response from Mallinckrodt regarding their
23 oxycodone marketing plan to physicians?

24 MS. FUMERTON: Objection, form.

25 A. I do not.

1 BY MR. BOWER:

2 Q. Is there any reason why Walmart
3 would be asking this question, from your
4 perspective, based on your experience as a
5 buyer of oxycodone for Walmart for 12 years?

6 MS. FUMERTON: Objection, form.

7 A. Without seeing what George's
8 question was to me, I'm not sure what we were
9 asking.

10 BY MR. BOWER:

11 Q. Do you think George provided
12 you a written question?

13 A. I can't remember.

14 Q. How would you -- how would we
15 be able to -- how would you be able to see
16 his question if it wasn't in writing?

17 MS. FUMERTON: Objection, form.

18 A. I don't know.

19 BY MR. BOWER:

20 Q. This is oxycodone, right, in
21 2016, right?

22 MS. FUMERTON: Objection, form.

23 A. I see that on the e-mail.

24 BY MR. BOWER:

25 Q. This is about a little more

1 than two years ago, right?

2 A. That is correct.

3 Q. At this point, the opioid
4 epidemic had been discussed in the media
5 frequently, right?

6 MS. FUMERTON: Objection, form.

7 A. I don't -- I don't recall
8 specifically.

9 BY MR. BOWER:

10 Q. It would have been the subject
11 of numerous TV shows, numerous books,
12 numerous political discussions, right?

13 MS. FUMERTON: Objection, form.

14 A. I don't recall.

15 BY MR. BOWER:

16 Q. And do you recall -- do you
17 recall at any point there being a problem
18 that folks were raising about marketing
19 oxycodone to physicians?

20 A. Walmart --

21 MS. FUMERTON: Objection, form.

22 A. Walmart did not participate in
23 marketing oxycodone to physicians.

24 BY MR. BOWER:

25 Q. Well, you just said you didn't

1 recall, right? How can you be certain?

2 MS. FUMERTON: Objection, form,
3 misstates her testimony.

4 A. I don't recall what this e-mail
5 is about. I know as a buyer I did not put
6 together any plan that went to physicians
7 that was marketing. A vendor could have
8 brought an idea to me that I reviewed or
9 looked at or saw, but we did not execute a
10 marketing plan to physicians that I'm aware
11 of.

12 BY MR. BOWER:

13 Q. Do you know whether George ever
14 executed such a marketing plan?

15 MS. FUMERTON: Objection, form.

16 A. It would be unusual for him in
17 that position to execute a marketing plan.

18 BY MR. BOWER:

19 Q. Is it unusual for you to be
20 asking Mallinckrodt about a marketing plan to
21 physicians with respect to oxycodone?

22 MS. FUMERTON: Objection, form.

23 A. It would not be unusual for me
24 to follow up on any question that the
25 president of health and wellness had asked

1 me.

2 BY MR. BOWER:

3 Q. Okay.

4 (Walmart-Little Exhibit 31
5 marked.)

6 BY MR. BOWER:

7 Q. You've been handed what's been
8 marked as Exhibit 31, it's a one page e-mail.
9 Please take a moment to review it.

10 MR. CIULLO: What's the Bates?

11 MR. BOWER: Yeah, the Bates
12 number is -- it's a Walmart document
13 ending in 21571. It's a one-page
14 document.

15 MR. CIULLO: Thank you.

16 (Document review.)

17 BY MR. BOWER:

18 Q. Do you see that?

19 A. I do.

20 Q. Who is Bonnie New?

21 A. Bonnie was our account director
22 with Mallinckrodt.

23 Q. Okay. And she's writing to
24 yourself and cc'ing Linda Wilson, correct?

25 A. That is correct.

1 Q. And she is conveying a
2 conversation we had with Ms. Wilson, right?
3 She says: I spoke with Linda this morning.

4 A. Yes.

5 Q. Right? And she spoke with
6 Linda regarding the distribution of oxy,
7 right?

8 A. About oral solution, yes.

9 Q. Right.
10 What is an oral solution? Is
11 that a new product?

12 A. It would be a liquid product.
13 This was a new -- a new offer that
14 Mallinckrodt had presented to us for a new
15 item.

16 Q. In connection with that offer,
17 Linda was going to look at the files that
18 prescribers provided and try to identify
19 cities within the given ZIP codes that would
20 be appropriate for stocking this product at
21 the Walmart locations.

22 Do you see that?

23 A. I see that Mallinckrodt stated
24 that, yes.

25 Q. Okay. Did you ever look at

1 that file of prescribers provided by
2 Mallinckrodt?

3 A. I'm not sure if I ever looked
4 at that file or not.

5 Q. Do you recall ever seeing such
6 a file?

7 A. I don't recall seeing a file.

8 Q. Do you recall speaking with
9 Linda about this product?

10 A. I did speak to Linda about this
11 product, yes.

12 Q. And what was that conversation
13 about?

14 A. We talked about this product
15 was a very small product, and it was a -- not
16 a product that I really was interested in
17 purchasing.

18 Q. And you weren't interesting in
19 purchasing because it was a small product; is
20 that correct?

21 MS. FUMERTON: Objection, form.

22 MR. BOWER: Let me strike that.

23 BY MR. BOWER:

24 Q. Why were you not interested in
25 purchasing it?

1 A. The brand of this item had been
2 off of the market, I don't remember what the
3 time span was. The market for this item was
4 small, and I -- I didn't feel that it was an
5 appropriate item for us.

6 Q. And what was the basis for your
7 feeling that it wasn't an appropriate item
8 for Walmart?

9 A. Because it was an oxycodone and
10 it was a liquid product.

11 Q. And why would that not be an
12 appropriate item for Walmart?

13 A. In my opinion, a liquid was
14 easier to be abused and it didn't have a
15 history of selling since the brand had been
16 off the market for a couple of -- I'm saying
17 a couple of years. I don't recall the time
18 span.

19 Q. Well, was a product's
20 susceptibility to abuse a criteria to
21 determine whether Walmart would stock the
22 product at the warehouse?

23 MS. FUMERTON: Objection, form.

24 A. That generally was not -- that
25 was generally not something that I would use.

1 This was a new product coming to the market
2 that did not have a history, and I did use
3 that criteria in my thoughts on this product.

4 BY MR. BOWER:

5 Q. So is it a true statement that
6 you used that criteria in this scenario
7 because it did not have a history of sales?

8 A. That is accurate.

9 Q. Okay.
10 (Walmart-Little Exhibit 32
11 marked.)

12 BY MR. BOWER:

13 Q. You've been handed what's been
14 marked as Exhibit 32. Take your time to
15 review it. I can tell you that my questions
16 are simply focused on the first page at the
17 top right there, the cc and the handwriting.

18 Do you see that?

19 A. Yes.

20 Q. This is a contract -- you can
21 review it. I don't mean to --

22 MS. FUMERTON: At least give
23 her a chance to see the general --

24 MR. BOWER: Yeah, yeah.

25 MS. FUMERTON: It might help

1 inform your questions.

2 MR. BOWER: Sure.

3 MR. CIULLO: While we're
4 waiting, can you give me the Bates?

5 MR. BOWER: Oh, yeah, sure.
6 This is a Walmart document again,
7 25445 through 447.

8 MR. CIULLO: Thank you very
9 much.

10 MR. BOWER: Sure.

11 (Document review.)

12 THE WITNESS: Okay.

13 BY MR. BOWER:

14 Q. Okay?

15 A. Yes.

16 Q. You see this is a signed
17 contract by -- by yourself dated 3/30/2011?

18 A. Yes.

19 Q. During this time period, you
20 had a responsibility for purchasing
21 prescription opiates for Walmart?

22 A. Yes.

23 Q. Okay. Is that your handwriting
24 in the top right corner of the first page?

25 A. It is not.

1 Q. Do you know whose handwriting
2 that is?

3 A. I do not.

4 Q. Typically, what was your
5 procedure once you signed a contract?

6 MS. FUMERTON: Objection, form.

7 A. The contracts were scanned in
8 electronically and e-mailed back to the
9 vendors.

10 BY MR. BOWER:

11 Q. Did Walmart save contracts in a
12 central location?

13 A. Not that I'm aware of.

14 Q. Well, this contract, for
15 example, references a different contract. Do
16 you see that? Contract No. 0400500123.

17 Do you see that?

18 A. Yes, I see that.

19 Q. Did you have the ability to
20 pull up that contract and see what those
21 terms were?

22 A. If it was a contract that I had
23 signed, I would look in my e-mail folders or
24 I would ask the manufacturer for a copy.

25 Q. And Walmart didn't maintain

1 copies of contracts it signed anywhere?

2 MS. FUMERTON: Objection, form.

3 A. No, they did not.

4 BY MR. BOWER:

5 Q. And let me ask it a different
6 way.

7 Based on your experience as a
8 buyer for Walmart for at least ten years, did
9 you save contracts that you had signed in any
10 central location?

11 MS. FUMERTON: Objection, form.

12 A. I saved my contracts in my
13 e-mail folders.

14 BY MR. BOWER:

15 Q. Okay. Did you have e-mail
16 folders for each manufacturer?

17 A. I did.

18 Q. Did you have e-mail folders
19 for -- organized by product?

20 A. I did not.

21 Q. They were organized by
22 manufacturer; is that correct?

23 A. Yes.

24 Q. Any other way they were
25 organized?

1 A. I think I had a brand or a
2 generic breakdown maybe, if I remember right.

3 Q. Do you know what happened to
4 those e-mails when you left Walmart?

5 A. I don't know.

6 Q. Do you know who replaced you
7 when you left Walmart?

8 A. I don't know.

9 Q. Do you know if anyone replaced
10 you?

11 A. I do not know.

12 Q. Do you know what the JBP
13 program refers to?

14 A. JBP? Joint business plan.

15 Q. Yeah, what is that?

16 A. That was a program that we had
17 in place for a couple of years where we
18 aligned with certain manufacturers. I think
19 I had mentioned it earlier, the strategic
20 planning.

21 I don't remember the exact
22 terminology earlier, but we had manufacturers
23 that we would work with on what their
24 upcoming pipelines were and do some
25 commitments on those in hopes to get a lower

1 cost of good, strengthen the relationship,
2 and then get supply on items that were hard
3 to supply in the market.

4 Q. Do you recall receiving a red
5 flags video from Bonnie New?

6 A. Red flags video? I do not.

7 Q. Have you ever heard the term
8 "red flags video" before?

9 A. Not that I remember.

10 Q. No?

11 What about a link to a letter
12 regarding a red flags video? Do you recall
13 that?

14 A. I don't recall that.

15 Q. Okay. Going back to the
16 Exhibit 32 for a moment, do you know what the
17 red folder refers to?

18 A. I do not.

19 Q. Okay. Do you know -- do you
20 recognize those names in the top of the
21 document there?

22 A. Tim Berry, I know who that is.
23 Lauren Wisbrink, I'm not familiar with that.
24 Sally Steiner may have worked for
25 Mallinckrodt. I'm not sure. It sounds

1 familiar, but I'm not sure.

2 Q. What was Tim Berry's position,
3 if you recall?

4 A. Tim Berry was a national
5 account manager or was our contact for a time
6 being.

7 Q. Do you recall attending a
8 customer meeting with Ayisha Jeter?

9 A. I'm sorry, could you repeat
10 that.

11 Q. Yes, do you recall ever having
12 a meeting with Ayisha Jeter regarding
13 Hysingla?

14 A. I do not.

15 Q. Do you recall discussing with
16 her pharmacist education of Hysingla?

17 A. I do not.

18 Q. Do you know whether Walmart
19 ever educated its pharmacists regarding
20 Hysingla ER?

21 A. I do not.

22 Q. Do you recall reviewing the
23 priority stores for Hysingla and presenting
24 the review to Ayisha?

25 A. I do not.

1 Q. Never recall meeting Ayisha?

2 A. The name does not sound
3 familiar.

4 Q. If I told you she worked at
5 McKesson, would that ring a bell?

6 A. It does not.

7 Q. What about if she worked at
8 Purdue, would that ring a bell?

9 A. It does not.

10 Q. No?

11 You ever meet with Lucy Baird
12 at Purdue?

13 A. Lucy Bard, yes.

14 Q. Did you meet with her regarding
15 Hysingla?

16 A. I don't remember that.

17 Q. Did you discuss with her ever
18 marketing -- educating Walmart pharmacists on
19 Hysingla?

20 MS. FUMERTON: Objection, form,
21 asked and answered.

22 BY MR. BOWER:

23 Q. I'm asking about Lucy Bard now.
24 Did you ever have any discussions with Lucy
25 Bard -- I'll rephrase.

1 Do you recall ever having
2 discussions or a meeting where such
3 discussions occurred regarding educating
4 Walmart pharmacists regarding Hysingla?

5 MS. FUMERTON: Objection, form,
6 asked and answered.

7 A. I don't remember.

8 BY MR. BOWER:

9 Q. Could have happened; you just
10 don't recall, right?

11 A. I don't recall.

12 Q. Do you recall speaking with
13 Dave Irwin regarding oxycodone?

14 MS. FUMERTON: Objection, form.

15 A. I don't remember.

16 BY MR. BOWER:

17 Q. You don't have any recollection
18 of speaking with him about oxycodone?

19 A. I don't remember, no.

20 Q. Do you recall Dave Irwin
21 visiting Walmart to discuss fentanyl?

22 A. I do not.

23 Q. Did you discuss Mr. Irwin
24 visiting Walmart to discuss oxy ER?

25 A. I do not.

1 Q. Do you recall ever meeting with
2 Dave Irwin in person?

3 A. Yes.

4 Q. And where do you recall meeting
5 with him?

6 A. I would have met with him at
7 the home office, potentially ECRM or NACDS.

8 Q. Why would you have met with
9 him? What was the purpose?

10 A. Dave represented Mallinckrodt
11 at one time. He also represented Glenmark at
12 one time. So it would have been meetings in
13 either of those situations.

14 Q. Do you recall ever calling Dave
15 and asking for his assessment of the growth
16 in the oxy market?

17 MS. FUMERTON: Objection, form.

18 A. I don't recall.

19 BY MR. BOWER:

20 Q. It could have happened, you
21 just don't recall, correct?

22 A. I don't remember.

23 Q. Do you recall discussing the
24 growth in the oxy market in late 2009 with
25 Mr. Irwin?

1 A. I do not.

2 Q. Could have happened, you just
3 don't recall, correct?

4 A. I don't remember.

5 Q. Do you know what ORF stands
6 for?

7 A. I don't think so.

8 Q. Okay. Do you recall meeting
9 with Steve S-E-I-D -- I'm not sure how to
10 pronounce that name.

11 Do you recall ever meeting with
12 Mr. S-E-I-D from Purdue?

13 A. I could have. I'm unsure of
14 the gentleman that I'm thinking of, of what
15 his name was, but...

16 Q. Okay. Do you ever recall
17 meeting with Shelton Benson of Purdue?

18 A. Yes.

19 Q. Okay. Where was that meeting?

20 A. We would have met at the home
21 office as well as potentially NACDS or ECRM.

22 Q. Do you recall discussing with
23 him store communication?

24 MS. FUMERTON: Objection, form.

25 A. Not particularly.

1 BY MR. BOWER:

2 Q. What about generally?

3 A. I don't remember specifics. I
4 mean, it could have been a topic, but I
5 don't -- I don't recall.

6 Q. Okay. Do you recall asking for
7 talking points to send to her stores for
8 pharmacist review?

9 A. I do not.

10 Q. Okay. Do you recall someone
11 from Sam's Club being present at any of those
12 meetings?

13 MS. FUMERTON: Objection, form.

14 A. I do not.

15 BY MR. BOWER:

16 Q. Maybe by the name of Charlie?

17 A. I do not.

18 Q. Doesn't ring a bell?

19 A. Huh-uh.

20 Q. Do you know what REMS stands
21 for, R-E-M-S?

22 A. Yes, I do.

23 Q. What does it stand for?

24 A. It's a risk mitigating factor
25 on some products.

1 Q. Do you recall discussing with
2 Mr. Benson the REMS in connection with
3 prescription opiates?

4 A. I do not.

5 MR. CIULLO: Object to form.

6 BY MR. BOWER:

7 Q. It could have happened; you
8 just don't recall, right?

9 A. I don't remember.

10 Q. All right. Do you recall
11 meeting with Mr. Benson where Walmart sales
12 data was made available?

13 MS. FUMERTON: Objection, form.

14 A. I do not.

15 BY MR. BOWER:

16 Q. What is NARS data, N-A-R-S?

17 A. I don't know.

18 Q. Do you recall discussing with
19 Mr. Benson the value of NARS data?

20 MS. FUMERTON: Objection, form.

21 A. I do not.

22 BY MR. BOWER:

23 Q. Do you recall a request to --
24 by Purdue to receive NARS data on a regular
25 basis?

1 MS. FUMERTON: Objection, form.

2 A. I do not.

3 BY MR. BOWER:

4 Q. Could have happened, you just
5 don't recall, correct?

6 A. I do not recall.

7 Q. Do you recall discussions with
8 Mr. Benson regarding Senokot?

9 A. I do not.

10 Q. Do you recall meeting with
11 Steve Bishop of Purdue?

12 A. Steve Bishop could be the one
13 person that I remember meeting with, but I
14 can't recall the name.

15 Q. Okay. What about Mike Cullen
16 of Purdue?

17 A. The name doesn't ring a bell.

18 Q. What about Tony Scifo,
19 S-C-I-F-O, of Purdue?

20 A. Huh-uh.

21 Q. Never met him?

22 A. It doesn't ring a bell.

23 Q. Ever meet him at an NACDS
24 meeting potentially?

25 A. Not that I remember.

1 Q. Who from Purdue would you meet
2 with at NACDS meetings?

3 A. I would meet with my account
4 representative, who would have been Shelton
5 or Lucy.

6 Q. Do you recall discussing
7 sharing the costs with Mr. Seid of oxy
8 distribution?

9 MS. FUMERTON: Objection, form.

10 A. I do not.

11 BY MR. BOWER:

12 Q. Could have had those
13 discussions; you just don't recall?

14 A. I do not remember.

15 Q. Do you recall attending a
16 meeting put on by Mallinckrodt that included
17 a presentation by Professor David Brushwood?

18 A. I do not.

19 Q. Did you -- are you familiar
20 with V-I-G-I-L, VIGIL, a process of screening
21 opioid analgesic prescriptions to ensure the
22 legal requirements are met?

23 A. I am not.

24 Q. Do you recall Mallinckrodt
25 putting on any such presentation that you

1 attended?

2 A. I do not.

3 Q. In 2011, an NACDS meeting, does
4 that refresh your recollection of attending
5 such a presentation?

6 A. I do not remember.

7 MS. FUMERTON: You've got like
8 one minute left.

9 MR. BOWER: Yeah.

10 BY MR. BOWER:

11 Q. Do you recall meeting with Mike
12 Inn- -- I-N-N-A-U-R-T-O -- regarding
13 prescription opiates in Bentonville?

14 A. Could you respell that?

15 Q. Sure. I think it's Innaurato,
16 I-N-N-A-U-R-A-T-O.

17 A. I do not.

18 Q. Okay. Would it help if I told
19 you he's from Purdue?

20 A. I do not remember.

21 Q. Okay. Who is Crystal Varela?

22 A. Crystal worked at Walmart. She
23 was in our post-audit department for a while
24 and was a buyer for a short period.

25 Q. Do you know why you and her met

1 with Mallinckrodt in August 23rd, 2012?

2 MS. FUMERTON: Objection, form,
3 lack of foundation.

4 A. I do not.

5 BY MR. BOWER:

6 Q. Do you recall such a meeting?

7 A. I do not.

8 Q. No?

■

■

■

12 Q. That was your cell phone
13 number, in or about 2012?

14 A. Yes.

15 Q. Okay. Any reason why the folks
16 at Mallinckrodt had that listed?

17 MS. FUMERTON: Objection, form.

18 BY MR. BOWER:

19 Q. Would you speak with folks at
20 Mallinckrodt on your cell phone regarding
21 Walmart business?

22 A. Yes, I would.

23 MR. BOWER: I have nothing
24 further. I think my time is up. Why
25 don't we switch.

1 MS. FUMERTON: I have no
2 questions.

3 MR. BOWER: Oh, no questions?
4 Okay.

5 THE VIDEOGRAPHER: This ends --

6 MS. FUMERTON: Go off the
7 record.

8 THE VIDEOGRAPHER: This ends
9 today's deposition. Going off the
10 record at 5:28 p.m.

11 (Proceedings recessed at
12 5:28 p.m.)

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CERTIFICATE

I, MICHAEL E. MILLER, Fellow of the Academy of Professional Reporters, Registered Diplomate Reporter, Certified Realtime Reporter, Certified Court Reporter and Notary Public, do hereby certify that prior to the commencement of the examination, PATSY LITTLE was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that pursuant to FRCP Rule 30, signature of the witness was not requested by the witness or other party before the conclusion of the deposition.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

MICHAEL E. MILLER, FAPR, RDR, CRR
Fellow of the Academy of Professional Reporters
NCRA Registered Diplomate Reporter
NCRA Certified Realtime Reporter
Certified Court Reporter
Notary Public

My Commission Expires: 7/9/2020

Dated: December 19, 2018

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

1	ERRATA		
2	PAGE	LINE	CHANGE
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4		REASON:	_____
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1 ACKNOWLEDGMENT OF DEPONENT

2
3
4 I, PATSY LITTLE, do hereby certify
5 that I have read the foregoing pages and that
6 the same is a correct transcription of the
7 answers given by me to the questions therein
8 propounded, except for the corrections or
9 changes in form or substance, if any, noted
10 in the attached
11 Errata Sheet.
12

13 _____
14 PATSY LITTLE

DATE

15 Subscribed and sworn to before me this
16 _____ day of _____, 20 ____.

17 My commission expires: _____
18
19 _____

20 Notary Public
21
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	LAWYER'S NOTES		
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